

# **“Part 3”**

## **Law Curriculum 2018**

### **Recruit Handout**



### **BASIC RECRUIT TRAINING CHICAGO POLICE DEPARTMENT EDUCATION AND TRAINING DIVISION**

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Law Unit*



Law Handout  
“Part 3”  
Recruit Training  
Law Curriculum

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## **TOPIC: POLICE JURISDICTION**

### **MANDATORY READING MATERIAL:**

1. Illinois Compiled Statutes

Powers of Police Throughout District. 65 ILCS 5/7-4-8

Arrest by Peace Officer from Other Jurisdiction. 725 ILCS 5/107-4

Arrest by Private Person. 725 ILCS 5/107-3

2. Handout: “Police Jurisdiction”

### **STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. The recruit will identify under what circumstances an on-duty police officer may leave his municipality to exercise his or her police powers. 65 ILCS 5/7-4-8 and 725 ILCS 5/107-4(a-3). **SPO CPD 1**
2. The recruit will explain the procedural steps required for an arrest outside the primary jurisdiction. 725 107-4 (a-7). **SPO CPD 2**
3. The recruit will identify under what circumstances an off-duty police officer may exercise any police power outside the home jurisdiction. **SPO CPD 3**
4. The recruit will identify other police agencies which have the authority to exercise police powers within the City of Chicago. 65 ILCS 5/7-4-8, 725 ILCS 5/107-4(a-3), and 725 ILCS 5/107-4(b) **SPO CPD 4**

## Police Jurisdiction Handout

I. If a police officer is within the boundaries of his or her “home” or “primary” jurisdiction, that officer has the power to act with the authority of law enforcement, on or off duty. This is defined by who hired the police officer. **SPO CPD**

The home jurisdiction of a Chicago Police Officer is:\_\_\_\_\_.

**Question:** When a police officer is physically outside of the jurisdiction granted by his or her employer (the “home” or “primary” jurisdiction), what authority does he or she have to make an arrest or otherwise exercise power as a police officer? See the following statutes.

II. **65 ILCS 5/7-4-8. Powers of Police Throughout District. (Applies for officers hired by municipalities.)**

**SPO CPD**

A. **"Police District"** definition according to 5/7-4-7:

The municipality and any \_\_\_\_\_  
in any county of this state.

B. The rule under this section: "The **police of any municipality** in such **police district** have **full authority and power as peace officers** and may go into any part of the district to exercise that authority and power. For these purposes the mayor of any municipality in the district, and the chiefs of police therein, shall use the police forces under their control anywhere in the district."

**\*While acting pursuant to this subsection, an officer has the same authority as within his or her home jurisdiction. When outside of these boundaries, although employed as a peace officer, a person is a private citizen, unless covered under the provisions of Chapter 725 below.**

### **III. 725 ILCS 5/107-4. Arrest by Peace Officer from Other Jurisdiction.**

#### **SPO CPD**

**A. Officers within Illinois. 725 ILCS 5/107-4 (a-3):** "Any peace officer employed by a law enforcement agency of this State may conduct **temporary questioning** pursuant to Section 107-14 of this Code [725 ILCS 5/107-14] and may **make arrests** in any jurisdiction within this State **if**:

(1) the officer is **engaged in the investigation of an offense that occurred in the officer's primary jurisdiction** and the temporary questioning is conducted or the arrest is made pursuant to that investigation, or

(2) the officer, while **on duty** as a peace officer, becomes **personally aware** of the immediate commission of a felony or misdemeanor violation of the laws of this State, or

(3) the officer, while on duty as a peace officer, is requested by the appropriate State or local law enforcement official to render aid or assistance to the requesting law enforcement agency that is outside the officer's primary jurisdiction. While acting pursuant to this subsection, an officer has the same authority as within his or her own jurisdiction.

**\*While acting pursuant to this subsection, an officer has the same authority as within his or her home jurisdiction.**

**Examples: Apply 725 ILCS 5/107-4.**

**EXAMPLE #1:** While on duty, Officer Vega, a Chicago Police Officer, responds to a call from the manager of a local convenience store in Chicago. The manager states that while ringing up a customer she observed a handgun under the customer's coat. She gives Officer Vega a description of the customer, and the license plate number of the car in which the customer drove away. A computer check reveals that the owner of the car is a convicted felon.

One hour later, while outside of Cook County on other police business, Officer Vega sees the vehicle being driven by a man fitting the manager's description of the customer with the gun. Officer Vega initiates an investigatory stop. The man is verbally abusive to Officer Vega. Officer Vega pats the man down, and finds no weapon. The man complains that Officer Vega had no right to stop him and pat him down. Is the man correct? Is Officer Vega acting with the legal authority of a police officer, or a private citizen at this time?

**ANSWER:**

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See 725 ILCS 5/107-4 (a-3)(1) the officer is **engaged in the investigation of an offense that occurred in the officer's primary jurisdiction** and the temporary questioning is conducted or the arrest is made pursuant to that investigation.

**EXAMPLE #2:** Detective Anthony is a Chicago Police Detective, on duty. He receives reliable information that a man, wanted on a warrant for a murder that he is investigating, frequents a tavern in Will County.

Detective Anthony decides to travel to Will County in order arrest the man. If he is able to locate the man, does Detective Anthony have the authority as a police officer to make this arrest in Will County?

**ANSWER:**

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See 725 ILCS 5/107-4 (a-3)(1) the officer is **engaged in the investigation of an offense that occurred in the officer's primary jurisdiction** and the temporary questioning is conducted or the arrest is made pursuant to that investigation

**EXAMPLE #3:** You are on uniformed patrol in a marked squad car. Your supervisor orders you to go to the Sheriffs office in another county to pick up some reports. You are 5 miles outside of your own county when you observe a man beating another man with a baseball bat. You stop and arrest the man doing the beating. Have you made a lawful arrest? Do you have authority as a peace officer at this time?

**ANSWER:**

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**See 725 ILCS 5/107-4 (a-3) (2)** the officer, **while on duty** as a peace officer, becomes **personally aware** of the immediate commission of a felony or misdemeanor violation of the laws of this State



**EXAMPLE #4:** You are a Chicago Police Officer. For your vacation you decide to drive up to Lake County to do some fishing. While stopped for gas, you see a male point a gun at the gas station clerk and demand money. If you act, are you acting as a private citizen, or with authority as a police officer?

**ANSWER:**

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**IV. Officers from outside the state of Illinois. 725 ILCS 5/107-4 (b):  
SPO CPD**

"Any peace **officer of another State** who enters this state in fresh pursuit and continues within this State in **fresh pursuit of a persons in order to arrest him** on the ground that he has committed an offense in the other State has the **same authority to arrest and hold the person in custody as peace officers of this State have** to arrest and hold a person in custody on the ground that he has committed an offense in this state."

**V. Investigative Recommendations SPO CPD**

1. Whenever an officer takes law enforcement action outside of his or her primary jurisdiction, there is the **potential for injury due to mistaken identity** of the officer. The local police agency should be \_\_\_\_\_.

2. For arrests regarding misdemeanors or felonies committed in the **officer's presence while on-duty** in another jurisdiction, officers must be sure that they have \_\_\_\_\_.

3. **725 ILCS 107-4 (a-7) requires that "The law enforcement agency of the county or municipality in which any arrest is made under this Section shall be immediately notified of the arrest."**

4. If you become personally aware of the immediate commission of a misdemeanor or felony while on-duty and outside of your primary jurisdiction, and you make an arrest, should you take the offender back to your district station for processing?

\_\_\_\_\_.

**VI. 725 ILCS 5/107-3. Arrest by Private Person.**

"Any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation **is being committed.**"

**VII. Other Agencies with Arrest Powers.  
SPO CPD**

A. There are some other groups that have police powers that you may encounter. These groups include:

**TOPIC:****USE OF FORCE (1-2 of 10)****MANDATORY READING MATERIAL:**

1. Illinois Compiled Statutes: 720 ILCS 5/7
2. Handouts: Use of Force Worksheet for each hour

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. The recruit will define and describe the significance of the Fourth Amendment with respect to the justifiable use of force.
2. The recruit will demonstrate an understanding of the decision of the 1985 United States Supreme Court case Tennessee v. Garner and the “fleeing felon” rule.
3. The recruit will recognize and interpret post-Garner decisions.
4. The recruit will recognize the relationship between the decision of the United States Supreme Court in Tennessee v. Garner and our Illinois laws on the use of force by peace officers.

Use of Force  
Chapter 720, Article 7, Justifiable Use of Force  
*Required Sections for Study: 720 ILCS 5/7-1 through 7-9;  
Review also 720 ILCS 5/2-8 and 2-19.*

**HOURS 1-2**

1. The Fourth Amendment is the constitutional amendment which guarantees the citizen's right to be free from \_\_\_\_\_ searches and seizures.
2. Whenever a police officer detains a citizen, and the police-citizen interaction is NON-CONSENSUAL, that detention is a "seizure." Examples of "seizures" by police are:
3. If a police officer stops a fleeing suspect with a bullet, has the officer "seized" that person? Why or why not?
4. The key concept in deciding whether or not the use of force is constitutional is \_\_\_\_\_.
5. \_\_\_\_\_ is the 1985 United States Supreme Court case that decided whether it is constitutional for the police to use deadly force to stop the non-violent fleeing felon.
6. It is unconstitutional / unreasonable to use deadly force to stop the non-violent fleeing felon. This is called the " \_\_\_\_\_ " rule.
7. In the case above, did the United States Supreme Court prohibit the use of deadly force to prevent the escape of all fleeing felons?

8. These are the guidelines set by the United States Supreme Court in the above case:  
It could be reasonable (lawful) for a police officer to use deadly force to

**PREVENT THE ESCAPE** of a suspect **IF:**

1. probable cause to arrest,
2. **NECESSARY** to prevent escape,
3. **VERBAL WARNING** given where feasible, AND EITHER
4. **Suspect has threatened officer with a**  
**WEAPON,**

**OR**

5. **COMMITTED OR ATTEMPTED A CRIME INVOLVING OR**  
**THREATENING SERIOUS PHYSICAL INJURY.**

*In these cases the court said the suspect “poses a threat of serious physical harm, either to the officer or others.”*

9. Post-**Garner** Decisions:

1. **Graham v. Connor** (United States Supreme Court case):

- a. Excessive force claims by citizens: citizen must show that police use of force was \_\_\_\_\_.
- b. **“Objective Reasonableness” Standard: the point of view of the**  
\_\_\_\_\_ **on the scene.**

2. Cases of self-defense: Use the Fourth Amendment \_\_\_\_\_ standard.

3. Clarifications on the requirement that a verbal warning be given:
  - a. Warning required only when \_\_\_\_\_.
  - b. No specific warning of deadly force required. "Halt--police" sufficient.
4. Is a bullet the only way to "seize" a suspect? \_\_\_\_ . According the United States Supreme Court, is the police use of a roadblock a "seizure" under the Fourth Amendment?
5. What if the officer shoots and misses? Is this seizure?
6. Does the use of police dogs constitute deadly force?
10. Remember, the decision to use deadly force must always be \_\_\_\_\_ and \_\_\_\_\_.

The use of deadly force to stop the non-violent fleeing offender is always unlawful.

Under the guidelines outlined above the use of deadly force could be reasonable if necessary to prevent the escape of the violent arrestee (the arrestee with a weapon or the arrestee who has committed/attempted the crime involving/threatening serious physical injury).

## **The Use of Deadly Force and the Fleeing Felon**

In general, a peace officer may use a “*reasonable and necessary*” amount of force in order to effect an arrest. If a peace officer reasonably believes it is necessary to prevent death or great bodily harm to him or herself or another, the peace officer may lawfully use deadly force. But what about the cases where there is *no imminent threat* to the life of the peace officer or another? What if the offender is fleeing, and the peace officer wants to use deadly force to stop the suspect? Can an officer ever lawfully fire at a *fleeing* offender? The answer is yes, if it is reasonable and necessary, *in certain cases*. We get this answer from the United States Supreme Court, Illinois law, and the policy of the Chicago Police Department.

### **The Case Law: Tennessee v. Garner**

In 1985, the United States Supreme Court decided that it is a violation of the Fourth Amendment, of the United States Constitution, for police to use deadly force to stop non-violent fleeing felons. The case is **Tennessee v. Garner**, 471 U.S. 1, 105 S.Ct. 1694 (1985). The court did not say police can never use deadly force to stop fleeing offenders. The court did say that a Tennessee law which allowed police to use deadly force to stop all fleeing felons, without consideration of whether or not the offender was armed, or what crime the offender had committed, was unlawful. Very simply, the fact that an officer may be slower than an offender cannot alone justify a shooting: “It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. The police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.” *Id.* at 11, 105 S.Ct. 1694, 1701. According to the United States Supreme Court, it is better in these cases that the offender gets away, than that the police risk ending the offender’s life. Without additional facts, the use of deadly force in these cases would be unreasonable, unconstitutional, unlawful.

In **Garner**, a police officer used deadly force to stop an unarmed fleeing burglar. Garner, who lost his life as a result, was an example of what the court would consider to be a “non-violent fleeing felon.” Garner was both unarmed, and had not committed a crime involving serious physical injury. The court concluded that if Garner had been using a weapon in a threatening way, or had committed a crime involving serious physical harm, then it could have been lawful for police to use deadly force to stop him: “When the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not unconstitutionally unreasonable

to prevent the escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction of serious physical harm, deadly force may be used if necessary to prevent the escape, and if, where feasible, some warning has been given.” *Id.* At 11-12, 105 S.Ct. 1694, 1701. In other words, if any of these factors were present, it would *not* be better if the offender got loose into society. Note still that the court emphasized that the use of deadly force could only have been reasonable if all other means to apprehend the offender had been exhausted. That is, even when chasing an armed, violent fleeing felon, *the use of deadly force must be necessary to prevent escape.*

## **Illinois Law**

Illinois law must be consistent with the holding of **Tennessee v. Garner**. That is, state law cannot authorize the use of deadly force to stop the non-violent fleeing felon, since we now know that would be unconstitutional. State law may authorize the use of deadly force to stop suspects that have committed violent crimes or are using weapons, when such use of deadly force is reasonable and necessary. We must examine the specific language of the Illinois statute about the use of force by peace officers. In full the law reads:

### **720 ILCS 5/7-5 Peace officer’s use of force in making arrest**

(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from effort to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm when making the arrest. However, he is justified in using force likely to cause death or great bodily harm [deadly force] only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, **or when he reasonably believes both that:**

- (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and**
- (2) the person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.**



The text in bold (bold was added), highlights the provisions regarding deadly force and fleeing felons. If it is reasonable and necessary to prevent the defeat of an arrest, a peace officer may lawfully use deadly force to stop the fleeing felon in three possible cases:

- (1) the fleeing felon has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm (See 720 ILCS 5/2-8 for “Forcible Felony”);
- (2) the fleeing felon is attempting to escape by use of a deadly weapon; or
- (3) the fleeing felon indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Only one of the three circumstances above must be present. If the peace officer cannot apprehend the suspect any other reasonable way, then the use of deadly force could be lawful to stop the fleeing offender in these cases. If one of the above factors was present, then the lawfulness of the shooting depends on the officer’s decision that the use of deadly force was both reasonable and necessary. If one of the above factors is not present, then the officer who has fired at the fleeing offender has acted unlawfully.

## **Summary**

The law on the use of deadly force by police officers tells the officer when the use of deadly force *could be* lawful. Unfortunately the lawmakers cannot outline every possible fact scenario an officer might face, or give a “yes” or “no” answer on whether every possible shooting is legal. The most an officer can expect from the law is an understanding of when the use of deadly force would *definitely not* be legal. In all the other cases, where the officer shoots the determination of lawfulness comes from a review of the particular circumstances present at the time of the decision to shoot. Ultimately, the burden is on the officer to explain why he or she reasonably believed that firing was reasonable.

**TOPIC:**

USE OF FORCE (3-4 of 10)

**MANDATORY READING MATERIAL:**

1. Illinois Compiled Statutes: 720 ILCS 5/7
2. Handouts: Use of Force Worksheet

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. The recruit will define “deadly force” and list examples of deadly force.
2. The recruit will recognize prohibited use of force by peace officer; chokehold.  
720 ILCS 5/7-5.5. **(STATE SPO 7)**
3. The recruit will demonstrate an understanding of Illinois law 720 ILCS 5/7-8 regarding “force likely to cause death or great bodily harm.” **(STATE SPO 10)**
4. The recruit will define “great bodily harm.”
5. The recruit will define the “forcible felonies” according to Illinois law 720 ILCS 5/2-8.  
**(STATE SPO 1)**
6. The recruit will define the forcible felonies which always involve the infliction of great bodily harm.
7. The recruit will recognize the circumstances which justify the private person’s use of force in defense of person according to Illinois law 720 ILCS 5/7-1. **(STATE SPO 2)**
8. The recruit will recognize the circumstances which justify the private person’s use of force in defense of dwelling according to Illinois law 720 ILCS 5/7-2. **(STATE SPO 3)**
9. The recruit will recognize the circumstances which justify the private person’s use of force in defense of other property according to Illinois law 720 ILCS 5/7-3. **(STATE SPO 4)**

## USE OF FORCE WORKSHEET (hour 2 of 4)

1. Define deadly force:

*If it is **likely to result** in death or great bodily harm then it is **deadly force**; shooting someone, striking someone on the head with a baton, the use of a chokehold (720 ILCS 5/7-5.5)*

2. Examples of things that could result in death or great bodily harm:

- a. The firing of a firearm at someone.
- b. Multiple persons kicking another.
- c. Stun gun or taser.
- d. Baton on head.

*Almost anything **could result** in death or great bodily harm.*

3. When it comes to analyzing whether the use of deadly force by a police officer was authorized under the law, is the intended result relevant? See 720 ILCS 5/7-8.

Does the fact that the officer did not intend to kill the victim (“shot to wound”) change whether or not the use of force was justified?

Does the fact that the officer aimed at the tires of a vehicle, where trying to stop an arrestee in a vehicle, change whether or not the use of deadly force was legal?

4. “Great bodily harm” refers to life-threatening injuries, injuries which require immediate medical attention, and injuries with permanent results. An injury which is an example of great bodily harm is:

\_\_\_\_\_.

5. The “forcible felonies” are (720 ILCS 5/2-8):

M

A

A

C

K

B

A

R

T

AND Other felonies involving physical harm...

6. The “forcible felonies that always involve the infliction or threatened infliction of great bodily harm” are Murder and the Aggravated Batteries with GBH:

M

A

When completed, these offenses **ALWAYS** result in a victim who suffers GBH or Permanent Disability or Disfigurement. **The other forcible felonies DO NOT ALWAYS result in GBH to a victim!**

7. Pick out the “**forcible felonies**”

**NOT Forcible felonies**

kidnapping  
first degree murder  
assault  
aggravated assault  
unlawful use of weapons  
second degree murder  
battery  
aggravated battery  
arson  
criminal sexual assault  
robbery  
aggravated battery involving great bodily harm  
tampering with foods, drugs or cosmetics  
treason  
bribery

8. Pick out the “**forcible felonies that always involve the infliction or threatened infliction of great bodily harm**”:

aggravated kidnaping  
first degree murder  
aggravated assault  
unlawful use of weapons  
second degree murder  
aggravated battery  
arson  
predatory criminal sexual assault of a child  
aggravated battery involving great bodily harm

9. When may a person use **deadly force** in defense of person? (5/7-1)

Reasonable and necessary:

1. To prevent imminent death or great bodily harm to himself or another

Or

2. prevent **commission of**\_\_\_\_\_.

10. When may a person use **deadly force** in defense of **dwelling**? (5/7-2)

Reasonable and Necessary and:

1. The entry is made in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling,

OR

2. prevent **commission of**\_\_\_\_\_ in the dwelling.

11. When may a person use **deadly force** in defense of **property**? (5/7-3)

Reasonable and Necessary to:

1. prevent **commission of**\_\_\_\_\_.

**TOPIC:**

USE OF FORCE (5-6 of 10)

**MANDATORY READING MATERIAL:**

1. Illinois Compiled Statutes: 720 ILCS 5/7
2. Handouts: Use of Force Worksheet

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. The recruit will demonstrate an understanding of Illinois law 720 ILCS 5/7-5 regarding a Peace officer's use of force in making an arrest. **(STATE SPO 6)**
2. The recruit will demonstrate an understanding of Illinois law 720 ILCS 5/7-9 regarding a peace officer's use of force to prevent escape. **(STATE SPO 11)**
3. The recruit will recognize the circumstances which would justify a private person's use of force in making an arrest according to Illinois law 720 ILCS 5/7-6. **(STATE SPO 8)**
4. The recruit will explain that a private person is not authorized to use force in resisting an arrest by a peace officer, according to 720 ILCS 5/7-7. **(STATE SPO 9)**

1. Need a peace officer ever retreat or desist from making an arrest? (5/7-5)
2. Generally, how would you describe the amount of force an officer would use to make an arrest? A \_\_\_\_\_ and \_\_\_\_\_ amount of force.
3. If an arrestee resists, does this authorize the police officer to use excessive force?
4. What amount of force is a peace officer justified in using to prevent the escape of a person from a penal institution, when the officer believes that person to be lawfully detained in the penal institution? (5/7-9(b)).
5. What is a “penal institution?” (720 ILCS 5/2-14) Is the district station a penal institution?
6. May a private person use force to make an arrest? (5/7-6)
7. May a private person use deadly force to stop a fleeing offender? (5/7-6)
8. Is a person authorized to resist an arrest he or she believes to be unlawful (meaning because they know they are innocent, for example)? (5/7-7)

Is it resisting if the person does not know that it is a peace officer making the arrest (officer in plain clothes does not identify themselves, for example)? (5/7-7)



**When may a peace officer use force likely to cause death or great bodily harm/deadly force? (5/7-5)**

[PRESENT THREAT TO INDIVIDUAL LIFE]

**1. Reasonable and Necessary to prevent death or great bodily harm to self or another,**

*\*Scenario questions: Officer has gun pointed at him or her, officer is being fired upon, officer or citizen is about to be stabbed or shot. The use of deadly force is lawful, as long as it is REASONABLE to believe it is NECESSARY to PREVENT DEATH OR GREAT BODILY HARM to the officer or citizen.*

**OR**

[VIOLENT FLEEING FELONS]

**2. Reasonable and necessary to prevent the defeat of an arrest by resistance or escape AND the person to be arrested:**

**a. Has committed or attempted to commit a forcible felony with**

\_\_\_\_\_.

*\*Remember that a FRACTURED SKULL is an example of "great bodily harm." Someone who is willing to cause a life-threatening injury to another human being is a type of "violent fleeing felon."*

*\*If the use of deadly force is not NECESSARY to prevent escape, the use of deadly force is not lawful. If an officer can catch a murderer on foot, or the murderer is surrounded in a building and not able to go anywhere, then AT THAT POINT, the use of deadly force is NOT NECESSARY.*

**Or**

**b. \_\_\_\_\_.**

*\*Scenario questions: If this is the justification to recognize, it will be clearly stated that the DEADLY WAEPON is a GUN, in the person's HAND, and the person is USING it to make his or her escape.*

**Or**

**c. \_\_\_\_\_.**

**TOPIC:**

USE OF FORCE (7 of 10)

**MANDATORY READING MATERIAL:**

1. Illinois Compiled Statutes: 720 ILCS 5/7
2. Handouts: Use of Force Worksheet

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. The recruit will recall 720 ILCS 5/7-5, "Peace officer's use of force in making arrest," from previous hour's discussion. **(STATE SPO 6)**
2. The recruit will apply 720 ILCS 5/7-5, "Peace officer's use of force in making arrest," to various scenarios. **(STATE SPO 6)**
3. The recruit will recognize extra-legal circumstances to be considered when discharging a firearm at a person. **(STATE SPO 12)**
4. The recruit will demonstrate the ability to articulate specific facts which justify the amount of force used. **(STATE SPO 13)**

**Sample scenarios involving peace officers: Apply 720 ILCS 5/7-5, “Peace officer’s use of force in making an arrest.”**

1. While on foot patrol, Officer observes Offender beating a Victim on the head with a baseball bat. Victim’s skull has been fractured by the offender. Upon seeing Officer, Offender flees. Officer pursues offender on foot and issues a verbal warning to Offender, demanding that he stop. Officer realizes that he will be unable to apprehend Offender in order to place him under arrest. Officer concludes that he can either shoot Offender, or allow Offender to escape. If it is reasonable under the circumstances, would Officer be acting lawfully if he fired at Offender in order to prevent the defeat of the arrest? Explain.

2. Officer responds to call of “burglary in progress.” Upon arrival at the scene Officer observes a person fleeing the scene with some articles in his hands. What should the officer do? Would Officer be acting lawfully if she decided to use deadly force to prevent the defeat of the arrest?

3. In an attempt to make an arrest, Officer is chasing a person who has committed first degree murder. The offender runs into an unoccupied park with the officer in pursuit. Officer continues to pursue the offender and realizes that he will be able to outrun the offender and apprehend him. Would the officer be acting lawfully if at this point he decided to shoot the offender? Explain.

4. Officer is called to arrest offender for retail theft. A teenager has reportedly stolen two pair of jeans from a department Store. As Officer arrives at the scene Officer observes a girl running from the store with jeans in one hand and a gun in the other. The girl uses the gun to make her escape. Assuming probable cause to arrest, if it is reasonable under the circumstances, and necessary to prevent the defeat of this arrest, may the officer use deadly force to stop this girl? Explain.

5. An officer responds to a call of a domestic disturbance. The officer arrives at the house and sees a man and a woman outside. The woman points at the man and yells, "He's trying to kill me." The man turns and the officer sees that he has a large knife in his hand. The man moves towards the officer with the knife. The man does not respond to the officer's verbal commands to stop. When it appears that the man will try to stab the officer, what amount of force can the officer use lawfully?

6. Officer observes an auto theft. The offender is driving away in the stolen vehicle and the officer fires at the tires of the vehicle to prevent his escape. Is the action of the officer lawful? Explain.

7. Offender is arrested for First Degree Murder. He escapes, and is pursued by several officers to a garage, where he is surrounded. The area is sealed off and secured. At this point, would the officers be justified in using deadly force against this offender? Explain.

8. You are called to a "tavern disturbance." A drunken man is bothering other customers. When you get there you find the drunken man, who is approximately the same height and weight as you are. The man strikes you in the face. At this point, in order to get the man under control, would it be reasonable to strike the man over the head with your baton? What would it be reasonable to do?

## The “Forcible Felonies”

**M**urder - 1 & 2

**A**ggravated Battery with Great Bodily Harm or Permanent Disability or Disfigurement

Above the line: FF’s that ALWAYS  
INVOLVE GBH! GBH or PDD is an  
ELEMENT OF THESE OFFENSES!

Below the line: These offenses are FF’s that DO Not  
always involve GBH; GBH is NOT AN ELEMENT of  
these offenses.

**A**ggravated Criminal Sexual Assault

**C**riminal Sexual Assault, Predatory Criminal Sexual Assault

**K**idnapping, Aggravated Kidnapping

**B**urglary, Residential Burglary

**A**rson, Aggravated Arson

**R**obbery

**T**reason

& other felonies involving great bodily harm...

**TOPIC:**

USE OF FORCE (Hour 8 of 10)

**MANDATORY READING MATERIAL:**

1. Illinois Compiled Statutes: 720 ILCS 5/7
2. Handouts: Use of Force Worksheet

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. The recruit will recognize extra-legal circumstances to be considered when discharging a firearm at a person. **(STATE SPO 12)**
4. The recruit will demonstrate the ability to articulate specific facts which justify the amount of force used. **(STATE SPO 13)**

## **Hour 8 of 10**

### **More Scenarios...**

1. An officer stops a vehicle that runs a red light. The driver exits the vehicle and flees. Would the officer be justified in using deadly force to stop this driver? Would it be lawful to fire a warning shot? Would it be lawful to shoot to wound this offender?
  
2. A retail theft offender is using a firearm to make his escape. If reasonable, and necessary, would the officer be justified in using deadly force to stop the offender?
  
3. An offender uses a baseball bat to fracture the skull of an old man, and also takes the old man's wallet. The offender drops the bat and runs from the police officer. If the police officer exhausts other means of apprehending this offender, is the use of deadly force legal? Has the offender committed a robbery? Has the offender inflicted great bodily harm to the victim?
  
4. A police officer is at home, at night, sleeping, when he hears what he believes is glass breaking at the house next door. He goes outside and sees a broken window and a man running from his neighbor's house. Are the facts sufficient to justify the police officer's use of deadly force here?

5. A police officer stops at a convenience store for a coffee break. As she approaches the store she sees an armed robbery in progress. The offender has a firearm. The offender exits the store and fires at the police officer. Would the police officer's use of deadly force be justified at this time?

6. A police officer sees her neighbor and a man arguing. The officer approaches the two and when she does so, the unknown man punches her in the face. The man then gets in a car and drives away. The police officer fires at the man in his vehicle. Is this use of deadly force justified? Has the offender committed a forcible felony that involves the infliction of great bodily harm?

7. Officers arrive at a "burglary in progress" call. When the officers arrive they see teens trying to steal property from a building. The teens drop the property and begin running away. If it becomes necessary to prevent escape, would the use of deadly force by the police officers be justified to stop these teens? Are the facts enough to establish the commission of a forcible felony involving great bodily harm?

8. A police officer stops the vehicle of a traffic violator. Once stopped the driver exits the vehicle and begins firing at the police officer. Would the police officer be justified in returning fire?



9. Officers X and Y are ending their tour of duty and driving back towards their district station. As they approach the station, they see a man running from the station with another officer in pursuit. One of the officers fires at the running man in an effort to stop him. Under these facts, is this a justifiable shooting?

10. A woman is arrested for theft and put into a squad car. Somehow, she escapes. If she cannot be apprehended any other way, would the use of deadly force be justified to stop her?

11. A man commits retail theft. He is running from the scene with the merchandise he has stolen. A police officer pursues the offender, but cannot apprehend him. Would the use of deadly force be lawful under these circumstances? Is retail theft a forcible felony that involves the infliction of great bodily harm?

12. An officer sees a man who is about to stab a woman. Is the use of deadly force by the police officer, against this man, justifiable?

13. A man is upset with his neighbor because the neighbor plays his music too loudly. The man threatens to go home and get a baseball bat to “take care” of the neighbor. A police officer is called to the scene. At this point, would the use of deadly force be justified?

14. A police officer is on patrol in her vehicle when she hears gunshots. She stops her vehicle and realizes that she is being fired upon. She sees a man in a building window, with a firearm, taking aim at her. Would the use of deadly force be justified at this time? Does the officer have a “duty to retreat” before resorting to the use of deadly force here?

15. Police officers report to the scene of a “teen disturbance; possible weapon involved.” As the officers arrive, the teens flee. An officer chases one of the teens. The teen is climbing over a fence and the officer observes a shiny object in the teen’s back pocket. Are the facts sufficient to justify the officer’s use of deadly force at this point?

16. Officers arrive at a “robbery in progress” at a store. When the officers arrive, they see teenagers fleeing from the store. The officers pursue the teenagers but cannot catch up to them. Are the facts sufficient to justify the use of deadly force by the officers?

17. Officer arrives at an “armed robbery in progress.” At the scene the officer sees a 15 year-old boy. The boy has a gun and points it at the police officer. Would the use of deadly force by the police officer be justified?

18. Two officers go to the home of an offender wanted on a warrant for unlawful use of weapons. When they arrive at the address, the wanted man sees the officers and runs away. At this point, under these circumstances, would it be lawful to use deadly force to stop the offender?

19. An officer reports to a “civil disturbance” where he finds people looting a store. One offender has taken a television from the store and is attempting to escape the scene. The police officer fires at the leg of this offender, hoping to wound and stop him. Were the actions of the officer lawful?

**Test yourself with the following true-false statements:**

1. Firing in the direction of a vehicle in which a person is riding, without intent to cause death or great bodily harm, is force likely to cause death or great bodily harm.
  
2. Illinois law prohibits citizens from resisting arrest when the citizen knows the identity of the officer. If a citizen resists, the police officer is justified in using excessive force.
  
3. According to 720 ILCS 5/7-5 a peace officer need never retreat or desist from making an arrest, even when the arrestee resists.
  
4. Generally, a police officer is authorized in using a reasonable and necessary amount of force to effect an arrest, and a reasonable and necessary amount of force in self-defense.

HOUR 9: Use of Force Study Aide: Practice Test

HOUR 10: Review of Practice Test Answers.

**STATE SPO 8: The recruit will recognize extra-legal circumstances to be considered when discharging a firearm at a person.**

**“Reasonable Belief”**

The key to the lawful use of deadly force is whether or not, at the time of the shooting, the officer reasonably believed that such force was necessary. “Reasonable belief” or “reasonably believes” means that the officer, acting as a reasonable individual, believes that the described facts exist. 720 ILCS 5/2-18. Unfortunately, no law class can prepare you for every situation you might face in your future. We can only describe when the decision to use deadly force might be a legal option.

Police officers are exposed to situations where they must decide immediately whether using deadly force would be lawful. An officer’s decision must take into consideration the information available at the time. Often, the only information available is the spoken word of the victim. Experienced officers have learned that what they are told by people may not be accurate, especially when it comes to naming the offense that has occurred. For example, an officer may be told by a victim that his “house has been robbed.” You know that, according to Chapter 720, what the victim is describing is the crime of “residential burglary” and not “robbery.” Therefore, when confronted with a situation, you must consider what information you may rely on safely. Absent corroborating factors, it is not wise to assume mere words are true.

Another aspect of “reasonableness” is that an officer must be aware of the location of the individual he or she is firing at, the location of any innocent people in the area, the field of fire, and his or her own accuracy with a firearm.

**EXAMPLE:**

Officers respond to a radio call of “robbery in progress” at a tavern. Upon arrival, several people yell “There they go!” The officers observe two individuals running from the scene, and begin to chase them. Would the use of deadly force be lawful in this situation?

**ANSWER:**

Consider what the officers actually **KNOW**. They know that they have received a radio assignment of a “robbery in progress.” They know that people on the scene have indicated that the two running individuals are involved in some way. When the officers begin chasing these individuals, they have none of the necessary facts on which they could base the decision to use deadly force if necessary to prevent the escape. The “offenders” may in fact have committed robbery, but the officers do not have the information to substantiate this at this point. The suspects may have left the tavern without paying their bar tab, have been involved in a fight, or may have done nothing at all.

Even if the suspects did commit robbery, there is no information to indicate the robbery involved the use or threatened use of serious physical force likely to cause death or serious physical injury. There is also no indication that the “offenders” are escaping using a firearm. There are no facts indicating that they are presenting a threat to the life of anyone, or ever have. Therefore, there are no facts which could justify the lawful use of deadly force in this scenario.

Before considering whether or not to use deadly force, you must evaluate the existing information. If the information is insufficient, refrain from the use of deadly force. If you are not sure, err on the side of caution. Remember, information obtained **BEFORE** resorting to the use of deadly force must provide the justification for the use of that force. If you are involved in a shooting, you are going to have to explain why you did what you did, and why the facts you had available at the time made the use of deadly force lawful.

## **Liability Issues**

Whenever an officer uses deadly force and it was not justifiable, the officer must be prepared to suffer the consequences. Unjustifiable or reckless use of deadly force by an officer may lead to civil or criminal liability.

**FEDERAL CIVIL RIGHTS ACT:** Under the Federal Civil Rights Act, police officers may be liable criminally or civilly for the unjustifiable use of deadly force. This is because the unlawful use of deadly force would constitute a violation of the citizen’s Fourth Amendment right to be free from unreasonable seizures.

STATE CIVIL SUITS: Police officers could be sued under state law. For example, if an officer unlawfully uses deadly force and injures someone, the officer may be sued for negligence. If the officer unlawfully uses deadly force and kills someone, the officer may be sued for wrongful death. In addition, if the conduct of the officer is determined to have been “willful and wanton misconduct” then the officer will be personally liable for any damages assessed against him or her. This means no indemnification by the employer.

STATE CRIMINAL LAWS: like all other citizens, police officers are subject to criminal prosecution. There are a number of Illinois statutes which could be violated by an officer’s unjustifiable use of deadly force. Consider the homicide offenses, and the charge of Official Misconduct, in particular.

CPD: The officer may also be suspended or fired by the Chicago Police Department for failing to act within the guidelines established by the policy.

**TOPIC:**

Laws of Admission (3 Hours)

**MANDATORY READING MATERIAL:**

1. Handout Materials

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Identify proper procedures for explaining nature of complaint to offender.  
**STATE SPO 1**
2. Recognize circumstances where persons must be advised of constitutional rights.  
**(Miranda v. Arizona) STATE SPO 3**
3. Identify proper procedures for advising persons of constitutional rights.  
**STATE SPO 4**
4. Identify content of constitutional warnings given to suspects. **STATE SPO 3**
5. Identify proper procedures for instructing a suspect on the process of obtaining an attorney.  
**STATE SPO 6**
6. Identify legal requirements pertaining to obtaining admissions and confessions.  
**STATE SPO 7** The waiver must be made knowingly, intelligently, voluntarily.
  - a. Identify requirements for recording a statement, confession, or admission by electronic means in a homicide case beginning July 2005.
  - b. Identify requirements for compliance with the Sixth Amendment rights to counsel in conducting questioning.



FIFTH (5th) -&- SIXTH (6th) AMENDMENT RIGHTS  
ADMISSIONS  
CONFESSIONS  
CUSTODIAL POLICE INTERROGATION

1. CASE LAW EVOLUTION

**Brown v. Mississippi**, 297 U.S. 278 (1936) is the first case in which the Supreme Court ruled that ***coerced confessions*** are **inadmissible**.

**Escobedo v. Illinois**, 378 U.S. 478 (1964) the Supreme Court holds that a confession obtained at a police station house was inadmissible because the defendant was intentionally and purposefully deprived of the right to counsel.

**Miranda v. Arizona**, 384 U.S. 436 (1966) the Supreme Court rules that police officers must **formally warn** an arrestee of certain “**Miranda rights**” **before interrogating the arrestee** when he is **in custody**.

2. TIMING

QUESTION: When must **Miranda warnings** be read?

ANSWER: When the person is in **custody** and the **police** want to **interrogate** him or her.

a. “**Custody**” means that a **reasonable person in the suspect’s position would believe that he or she is under arrest**. It is an **objective test**. Lack of formal arrest does not mean that the person is not in custody.

b. “**Interrogation**” is any words or actions on the part of the police that the **police should know are reasonably likely to elicit an incriminating response** from the suspect. Interrogation refers to more than just express questioning. See **Rhode Island v. Innis**, 446 U.S. 291 (1990).

QUESTION: When **Miranda** need not be read:

ANSWER: 1. When there is **no custody** and/or **no police interrogation**.

2. **General on-the-scene questioning:** e.g., officer at the scene inquires about what has occurred and a person confesses.
3. **Volunteered statements:** e.g. person walks in to police station or up to officer on street and confesses.
4. **Spontaneous exclamations:** e.g. suspect blurts out statement before officer can complete warnings.
5. **Public safety exception of New York v. Quarles,** 467 U.S. 649 (1984): applies if the questioning is reasonably prompted by a concern for public safety. It is an **objective test: would a reasonable officer in the same position perceive a threat to the public safety?** If so, the officer may ask questions before administering the Miranda warnings to a suspect in custody.

Bottom Line:

**if a suspect is *in custody* and an officer wishes to *interrogate* him or her, the Miranda warnings must be read prior to such questioning. If the warnings are not administered then any answers the suspect supplies are *per se inadmissible* at trial.**

### 3. Content

- a. You have the right to remain silent;
- b. If you do not remain silent, anything said can be used against you in court.
- c. You have the right to speak with an attorney;
- d. If you cannot afford an attorney one will be provided by the court.

### 4. Procedures

**FIRST:** Read the warnings from a pre-printed card. That way your testimony later will conclusively establish that nothing was left out. Ensure that the suspect understands the warnings. Record the facts indicating the suspect understood his or her rights.

**NEXT:** If the suspect exercises his or her rights under **Miranda**, interrogation must cease.

**BUT** -- If they do choose to waive their rights and answer questions, get a written statement confirming the waiver.

**REMEMBER** --A waiver of **Miranda** rights must be made **knowingly and intelligently** in order for the waiver to be valid. For example, if the waiver was coerced or obtained by deception, the mere fact that **Miranda** warnings were read to the suspect **does not** mean the responses to police interrogation will be admissible. Remember the Christian burial speech of **Brewer v. Williams**, 430 U.S. 387 (1977).

**Note:**

- ◆ Pursuant to **Berguis v. Thompkins**, 131 S.Ct. 33 (2010), an individual who is aware of their right to remain silent, must unambiguously invoke that right. If the individual does not explicitly invoke their right to remain silent, any subsequent voluntary statements may be used in court and the interrogation may continue.

5. As of July of 2005, Illinois statutes require that statements, confessions or admissions be recorded in order for them to be admissible as evidence

- a. Adult suspects in certain homicide cases. 725 ILCS 5/103-2.1
- b. Juvenile suspects in certain homicide cases. 705 ILCS 405/5-401.5.

**Note:**

- ◆ Only **custodial** interrogation provides the **Fifth Amendment** protection of **Miranda v. Arizona**, and the warning to right to counsel as it applies in protecting the privilege against self-incrimination.
- ◆ Independently the right to counsel under the **Sixth Amendment** applies for non-custodial, as well as custodial interrogation with respect to crimes charged. If the person has already been charged, even though they are not in custody, they may not be questioned without their lawyer (or waiver of the right) about the crimes they are charged with. **Fellers v. U.S.**, 124 S.Ct. 1019 (2004).
- ◆ Be aware that if a person has already been charged, or in the case above indicted although not yet arrested, they may have a right to counsel whether or not in custody, with respect to the offenses charged.
- ◆ Pursuant to **Maryland v. Shatzer**, 130 S.Ct. 1213 (2010), if an individual who has asserted their Fifth Amendment right to an attorney is released for Department custody prior to being charged with the offense for which they have asserted their rights, members may attempt to question the individual about this offense after a period of 14 days has expired.

**Brewer v. Williams, 430 U.S. 387 (1977).**

**FACTS:**

A ten year-old girl is abducted and murdered in Des Moines, Iowa. Williams, an escapee from a mental hospital, is the prime suspect, and a warrant for his arrest is issued. The day after the issuance of the warrant, Des Moines police receive a call from a Des Moines attorney who has heard from Williams. Williams called him from Davenport, 160 miles away. The attorney tells the police that he has advised Williams to turn himself in. Williams, in fact, does turn himself in to the Davenport police.

The Davenport police read Williams his **Miranda** warnings. Williams talks by phone to his attorney in Des Moines. The Des Moines lawyer tells him to remain silent until he returns to the Des Moines police station. Williams also consults a Davenport lawyer who advises him the same way.

Des Moines police drive to Davenport to get Williams. They promise the Des Moines lawyer they will not question Williams. In Davenport, when they pick up Williams, they also promise the Davenport lawyer that they will not question the defendant. The police deny the Davenport lawyer's request to ride in the car back to Des Moines. In the car Williams states several times that he will talk to the police, with his lawyer, when they get back to Des Moines.

**The "Christian Burial" Speech :**

Knowing Williams to be very religious, a detective in the car makes the following statements:

"I want to give you something to think about while we're traveling down the road...Number one, I want you to observe the weather conditions...They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is, that you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way into Des Moines, I feel that we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas Eve and murdered...I do not want you to answer me. I don't want to discuss it further. Just think about it as we're riding down the road."

Williams has the police stop outside Des Moines and leads them to where the body is. Williams' statement and the fact that the body is found where he said it was located, are introduced as evidence at trial. The trial court holds that Williams waives his right to have counsel present when he volunteers the information.

The Supreme Court reverses. It holds that the State has failed to show that Williams effectively waived his right to counsel. Although it is conceded that Williams understood his rights, the prosecution fails to show that he intended to relinquish that right -- remember the State has the burden to prove both an understanding of the nature of the rights and the intent to waive the rights.

Evidence of Williams' lack of relinquishment:

(1), Williams' contact with two lawyers;

(2), the lawyers' instructions to police not to interrogate him; and

(3), especially Williams' statements that he would talk to the police **after** having consulted with his attorney.

ESCOBEDO -v.- ILLINOIS  
378 U.S. 478, 84 S.Ct. 1758 (1964)

Justice GOLDBERG delivered the opinion of the Court:

The critical question in this case is whether, under the circumstances, the refusal by the police to honor petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," [Gideon v. Wainwright] and thereby renders inadmissible in a state criminal trial any incriminating statement elicited by the police during the interrogation.

On the night of January 19, 1960, Danny Escobedo's brother-in-law was fatally shot in the Canaryville-Bridgeport neighborhood of Chicago. In the early hours of the next morning, at 2:30 a. m., Escobedo was arrested by detectives assigned to the "Homicide Bureau" of the Chicago Police Department without a warrant. He was then interrogated. Escobedo made no statement to the police and was released at 5 p.m. that day pursuant to a state court writ of *habeas corpus* obtained by Mr. Warren Wolfson, a lawyer who had been retained by Escobedo.

On January 30, Benedict DiGerlando, who was then in police custody and who was later indicted for the murder along with Escobedo, told the police that Escobedo had fired the fatal shots. Between 8 and 9 that evening, Escobedo and his sister, the widow of the victim, were arrested and taken to police headquarters. En route to the police station, the police "had handcuffed Escobedo behind his back," and "one of the arresting officers told Danny that DiGerlando had named him as the one who shot" the deceased. Escobedo testified, without contradiction, that the "detectives said they had us pretty well, up pretty tight, and we might as well admit to this crime", and that he replied, "I am sorry but I would like to have advice from my lawyer". A police officer testified that, although Escobedo was not formally charged, "he was in custody" and "couldn't walk out the door."

Shortly after Escobedo reached police headquarters, his retained lawyer, Warren Wolfson, arrived. Wolfson described the ensuing events in the following terms:

"On that day I received a phone call and pursuant to that phone call I went to the Detective Bureau at 11th and State. The first person I talked to was the Sergeant on duty at the Bureau Desk, Sergeant Pidgeon. I asked Sergeant Pidgeon for permission to speak to my client, Danny Escobedo. \* \* \* Sergeant Pidgeon made a call to the Bureau lockup and informed me that the boy had been taken from the lockup to the Homicide Bureau. This was between

9:30 and 10:00 in the evening. Before I went anywhere, he called the Homicide Bureau and told them there was an attorney waiting to see Escobedo. He told me I could not see him. Then I went upstairs to the Homicide Bureau. There were several Homicide Detectives around and I talked to them. I identified myself as Escobedo's attorney and asked permission to see him. They said I could not. \* \* \* The police officer told me to see Chief Flynn who was on duty. I identified myself to Chief Flynn and asked permission to see my client. He said I could not. \* \* \* I think it was approximately 11:00 o'clock. He said I couldn't see him because they hadn't completed questioning. \* \* \* [F]or a second or two I spotted him in an office in the Homicide Bureau. The door was open and I could see through the office. \* \* \* I waved to him and he waved back 1 and then the door was closed, by one of the officers at Homicide. There were four or five officers milling around the Homicide Detail that night. As to whether I talked to Captain Flynn any later that day, I waited around for another hour or two and went back again and renewed my request to see my client. He again told me I could not. \* \* \* I filed an official complaint with Commissioner Phelan of the Chicago Police Department. I had a conversation with every police officer I could find. I was told at Homicide that I couldn't see him and I would have to get a writ of *habeas corpus*. I left the Homicide Bureau and from the Detective Bureau at 11th and State at approximately 1:00 A.M. [Sunday morning]. I had no opportunity to talk to my client that night. I quoted to Captain Flynn the Section of the Criminal Code which allows an attorney the right to see his client." 2

Escobedo testified that during the course of the interrogation he repeatedly asked to speak to his lawyer and that the police said that his lawyer "didn't want to see" him. The testimony of the police officers confirmed these accounts in substantial detail.

Notwithstanding repeated requests by each, Escobedo and his retained lawyer were afforded no opportunity to consult during the course of the entire interrogation. At one point, as previously noted, Escobedo and his attorney came into each other's view for a few moments but the attorney was quickly ushered away. Escobedo testified "that he heard a detective telling the attorney the latter would not be allowed to talk to [him] 'until they were done' " and that he heard the attorney being refused permission to remain in the adjoining room. A police officer testified that he had told the lawyer that he could not see Escobedo until "we were through interrogating" him.

There is testimony by the police that during the interrogation, Escobedo, a 22-year-old of Mexican extraction with no record of previous experience with the police, "was handcuffed" in a standing position 3 and that he "was nervous, he had circles under his eyes and he was upset" and was "agitated" because "he had not slept well in over a week."

It is undisputed that during the course of the interrogation Officer Montejano, who "grew up" in Escobedo's neighborhood, who knew his family, and who uses "Spanish language in [his] police

work", conferred alone with Escobedo "for about a quarter of an hour". \* \* \* Escobedo testified that the officer said to him "in Spanish that my sister and I could go home if I pinned it on Benedict DiGerlando, that we would go home and be held only as witnesses, if anything, if we had made a statement against DiGerlando \* \* \*, that we would be able to go home that night." Escobedo testified that he made the statement in issue because of this assurance. Officer Montejano denied offering any such assurance. A police officer testified that during the interrogation the following occurred:

"I informed him of what DiGerlando told me and when I did, he told me that DiGerlando was [lying] and I said, 'Would you care to tell DiGerlando that?' and he said, 'Yes, I will.' So, we brought Escobedo in and he confronted DiGerlando and he told him that he was lying and said, 'I didn't shoot Manuel, you did it.' "

In this way, Escobedo, for the first time admitted to some knowledge of the crime. After that he made additional statements further implicating him in the murder plot. At this point an Assistant State's Attorney, Theodore J. Cooper, was summoned "to take" a statement. Mr. Cooper, an experienced lawyer who was assigned to the Homicide Division to take statements from some defendants and some prisoners that they had in custody, "took" Escobedo's statement by asking carefully framed questions apparently designed to assure the admissibility into evidence of the resulting answers. Cooper testified that he did not advise Escobedo of his constitutional rights, and it is undisputed that no one during the course of the interrogation so advised him.

Escobedo moved both before and during trial to suppress the incriminating statement, but the motions were denied. Escobedo was convicted of murder and he appealed the conviction.

1. Escobedo testified that this ambiguous gesture "could have meant most anything," but that he "took it upon [his] own to think that (the lawyer was telling him) not to say anything," and that the lawyer "wanted to talk" to him.
2. The statute then in effect provided in pertinent part that: "All public officers \* \* \* having the custody of any person \* \* \* restrained of his liberty for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney \* \* \* whom such person \* \* \* may desire to see or consult \* \* \*." III.Rev.Stat. (1959), c. 38, § 477.
3. The trial judge justified the handcuffing on the ground that it "is ordinary police procedure."



## Laws of Admissions: Evaluation Questions

1. In the United States Supreme Court case of **Brown v. Mississippi**, what did the court hold about confessions which were the result of coercive actions by the police?
2. In the United States Supreme Court case of **Escobedo v. Illinois**, why did the court hold that defendant's confession at the police station was inadmissible?
3. The ruling in **Miranda v. Arizona** primarily safeguards the privilege against self-incrimination, which is guaranteed by which amendment of the United States Constitution?
4. When is it required by law that **Miranda** warnings be read to a person, in order for the statements of that person to be admissible at trial?
5. What constitutional rights is an accused being informed of when given **Miranda** warnings?
6. What happens if **Miranda** warnings are not administered when required by law?

7. How does an illegally obtained confession, which leads police to physical evidence, generally affect that physical evidence?
8. In order for a confession, that is the result of custodial police interrogation, to be admissible at trial against the accused, the accused must have been first given **Miranda** warnings. What else is required in order for the resulting confession to be admissible at trial?
9. The United States Supreme Court, in the case of **Rhode Island v. Innis**, defined “interrogation.” What is the definition described by the court?
10. What best describes what is meant by “custody” for purposes of custodial police interrogations?
11. A person walks into a police station and tells the desk sergeant that he wants to confess to a crime. At this point, in order to take a confession that would be admissible at trial, does the desk sergeant need to administer **Miranda** warnings?

12. A police officer is called to the scene of a shooting. The police officer approaches a man at the scene and asks him what he knows about what has reportedly happened. The man tells the officer that he has just killed his neighbor by purposely shooting him to death. The officer does not read the man his **Miranda** warnings. The man proceeds to lead the officer to the location of the dead body. Under these facts, is the confession of the man to the police officer admissible at trial against the man for first degree murder?
  
13. A suspect is lawfully arrested by a police officer. After booking, the suspect is told that he has the right to remain silent, and that if he answers any questions, the answers to those questions will be used against him. Nothing further is said by the officer. The officer then proceeds to ask the suspect questions, and the suspect confesses to the crime. Can this confession be used at trial against the suspect?
  
14. A police officer lawfully places a suspect under arrest. The officer is making the arrest pursuant to the existence of an arrest warrant on the suspect for murder. While the officer is handcuffing the suspect, he decides to inform the suspect of his **Miranda** warnings. The officer tells the suspect that he has the right to remain silent, and is then interrupted by the suspect's screaming, "I did it! I killed him! I'll get life in prison but I am still glad I did it!" Is this confession admissible at the trial of the man for first degree murder?

15. A suspect is lawfully arrested by a police officer. After booking, the suspect is told that he has the right to an attorney, and that if he cannot afford one, an attorney will be provided for him. Nothing further is said by the officer. The officer then proceeds to ask the suspect questions, and the suspect confesses to the crime. Can this confession be used at trial against the suspect?
16. An officer pulls a vehicle over for speeding. Once she approaches the driver, she asks him why he was driving so fast. The driver replies, "Because I've got a dead body in my trunk. It's a guy I just killed." Is this confession by the driver admissible at trial as evidence?
17. A police officer is called to the scene of a shooting. The police officer approaches a man at the scene and asks him what he knows about what has happened. He tells the officer that he was trying to shoot a rival gang member, but he accidentally shot the victim. At the same time he also shows the officer the location of the victim, a small child. Is the statement by the man admissible as evidence at trial?
18. An officer pulls a vehicle over for speeding. Once she approaches the driver, he asks him why he was driving so fast. The driver replies, "Oh was I speeding? I'm so drunk I can't see straight!" Is this confession by the driver admissible at trial as evidence?

19. Officers pursue a suspected rapist into a grocery store. The victim reported that she had been raped at gunpoint. As the officers are apprehending the suspect, handcuffing and searching him, they notice he has an empty shoulder holster and immediately ask, "Where's the gun?" The arrestee answers, "Over there," and nods towards some empty cartons. The loaded gun is found in this area. Is the gun now admissible as evidence?

**TOPIC:**

Rights of the Accused (2 Hours)

**MANDATORY READING MATERIAL:**

Rights on arrest	725 ILCS 5/103-1
Treatment While in Custody	725 ILCS 5/103-2
Right to Communicate with Attorney and Family	725 ILCS 5/103-3
Right to Consult with Attorney	725 ILCS 5/103-4
Speedy Trial	725 ILCS 5/103-5
Waiver of Jury Trial	725 ILCS 5/103-6
Post Notice of Rights	725 ILCS 5/103-7
Mandatory Duty of Officers	725 ILCS 5/103-8
Persons Arrested	725 ILCS 5/109-1
Children of Person Arrested	725 ILCS 5/109-1.1
Persons Arrested in Another County	725 ILCS 5/109-2
Preliminary Examination	725 ILCS 5/109-3
Persons Charged with Felonies	725 ILCS 5/109-3.1
Release on Own Recognizance	725 ILCS 5/110-2
Issuance of Warrant	725 ILCS 5/110-3
Bailable Offenses	725 ILCS 5/110-4
Determining the Amount of Bail and Conditions of Release	725 ILCS 5/110-5
Conditions of Bail Bond	725 ILCS 5/110-10
Methods of Prosecution	725 ILCS 5/111-1
Commencement of Prosecution	725 ILCS 5/111-2
Form of Charge	725 ILCS 5/111-3
Selection and Qualification	725 ILCS 5/112-1
Impaneling of the Grand Jury	725 ILCS 5/112-2
Duties of Grand Jury and the State's Attorney	725 ILCS 5/112-4
Rights to Counsel	725 ILCS 5/112-4.1
Secrecy of Proceedings	725 ILCS 5/112-6
Procedure on Arraignment	725 ILCS 5/113-1
Counsel for Defendant, Court Appointed	725 ILCS 5/113-3
Plea and Waiver of Jury by Persons Under 18	725 ILCS 5/113-5
Advisement Concerning Status as an Alien	725 ILCS 5/113-8

## STATE STUDENT PERFORMANCE OBJECTIVES

1. Identify the following rights of accused protected by state law (in Article 103)
  - a. Rights on arrest 725 ILCS 5/103-1
  - b. Treatment While in Custody 725 ILCS 5/103-2
  - c. Right to Communicate with Attorney and Family 725 ILCS 5/103-3
  - d. Right to Consult with Attorney 725 ILCS 5/103-4
  - e. Speedy Trial 725 ILCS 5/103-5
  - f. Mandatory Duty of Officers 725 ILCS 5/103-8
2. Identify the following preliminary examination rights of accused protected by state law (in Article 109)
  - a. Persons Arrested 725 ILCS 5/109-1
  - b. Children of Person Arrested 725 ILCS 5/109-1.1
  - c. Persons Arrested in Another County 725 ILCS 5/109-2
  - d. Preliminary Examination 725 ILCS 5/109-3
  - e. Persons Charged with Felonies 725 ILCS 5/109-3.1
3. Identify the following bail rights of accused protected by state law (in Article 110)
  - a. Release on Own Recognizance 725 ILCS 5/110-2
  - b. Issuance of Warrant 725 ILCS 5/110-3
  - c. Bailable Offenses 725 ILCS 5/110-4
  - d. Determining the Amount of Bail and Conditions of Release 725 ILCS 5/110-5
  - e. Conditions of Bail Bond 725 ILCS 5/110-10
4. Identify the methods of charging and offense (in Article 111)
  - a. Methods of Prosecution 725 ILCS 5/111-1
  - b. Commencement of Prosecution 725 ILCS 5/111-2
  - c. Form of Charge 725 ILCS 5/111-3
5. Identify the grand jury rights of accused protected by law (in Article 112)
  - a. Selection and Qualification 725 ILCS 5/112-1
  - b. Impaneling of the Grand Jury 725 ILCS 5/112-2
  - c. Duties of Grand Jury and the State's Attorney 725 ILCS 5/112-4
  - d. Rights to Counsel 725 ILCS 5/112-4.1
  - e. Secrecy of Proceedings 725 ILCS 5/112-6
6. Identify the arraignment rights of accuse protected by state law (in Article 113)
  - a. Procedure on Arraignment 725 ILCS 5/113-1
  - b. Counsel for Defendant, Court Appointed 725 ILCS 5/113-3
  - c. Plea and Waiver of Jury by Persons Under 18 725 ILCS 5/113-5
  - d. Advisement Concerning Status as an Alien 725 ILCS 5/113-8

## Evaluation Questions

1. 725 ILCS 5/103-1
  - a. After an arrest, what should the arrestee be informed of? 725 ILCS 5/103-1(a) and (b)
  - b. Are strip searches generally performed as a result of traffic or misdemeanor offenses? 725 ILCS 5/103-1(c)
  - c. Describe the strip search. 725 ILCS 5/103-1(d)
  - d. What are the restrictions regarding the performance of strip searches? 725 ILCS 5/103-1(e) and (f)(1)(2).
    - 1.
    - 2.
    - 3.
    - 4.
  - e. What must be obtained before performing a body cavity search? 725 ILCS 5/103-1(g).
  - f. What criminal offense would apply if an officer intentionally fails to comply with the provisions of this section? 725 ILCS 5/103-1(h).
  - g. Do the restrictions above apply to arrestees in the custody of correctional institutions? 725 ILCS 5/103-1(j).



2. **725 ILCS 5/103-2. List the rights described in “treatment while in custody.”**  
725 ILCS 5/103-2(a)-(c)
3. **725 ILCS 5/103-3.**
  - a. With whom does an arrestee have the “right to communicate” once in custody.  
725 ILCS 5/103-3(a)
  - b. How many phone calls is the arrestee permitted to make? 725 ILCS 5/103-3(a)
  - c. What if the arrestee is moved? Does the arrestee have the right to make more calls?  
725 ILCS 5/103-3(b)
4. **725 ILCS 5/103-4.**
  - a. With whom does an arrestee have the “right to consult” once in custody?
  - b. How many times and for how long are such meetings permitted?
5. **725 ILCS 5/103-5.**
  - a. If in custody, within how many days is an accused entitled to a trial?  
725 ILCS 5/103-5(a)
  - b. If the person was released on bail or recognizance, within how many days is the accused entitled to a trial? 725 ILCS 5/103-5(b)

6. **725 ILCS 5/103-6.** What are the two situations where an accused would not have a jury trial?
- (i)
  - (ii)
7. **725 ILCS 5/103-7.** Where and how should written notice of rights be posted?
8. **725 ILCS 5/103-8.** What criminal offense would apply if an officer intentionally failed to perform any act required of him or her by law?
9. **725 ILCS 5/109-1 and 725 ILCS 5/109-2.**
- a. Once arrested, within how much time, and where, should the accused be before a judge and a charge filed? 725 ILCS 5/109-1(a).
  - b. What would the judge tell the arrestee and do at this time? 725 ILCS 5/109-1(b).
    - 1.
    - 2.
    - 3.
    - 4.
    - 5.
  - c. What if the person is arrested in county other than one in which a warrant for his arrest was issued? 725 ILCS 5/109-2.
10. **5/113-3.** If defendant desires counsel and has been unable to obtain counsel before

arraignment, what should the court do?

11. **5/113-5.** How old would the accused have to be in order to plead guilty without being represented by counsel in open court?
12. Mr. Smith is arrested. Mr. Smith calls his attorney from the district station and asks his attorney, Ms. Jones, to come and help him. Soon after the call Mr. Smith is transported to Area 2. Since he told his attorney to meet him at the district station, Mr. Smith asks to call his attorney again. Is Mr. Smith entitled to another phone call? 725 ILCS 5/103-3(b).
13. Mr. Smith is arrested. Mr. Smith calls his attorney from the district station and asks his attorney, Ms. Jones, to come and help him. Ms. Jones arrives at the station only to be told by the officers that she is not allowed to see Mr. Smith because he has not been charged yet. If Ms. Jones is not permitted to meet with Mr. Smith, have Mr. Smith's rights been violated? 725 ILCS 5/103-4.
14. Jimmy Jones is being arraigned for murder. Jimmy Jones is 17 years old. He is not represented by counsel. When asked by the court where his attorney is, Jimmy says that he does not want a lawyer; he just wants to plead guilty to the charge. Would it be lawful for the court to accept his guilty plea at this time? 725 ILCS 5/113-5.
15. Jimmy Jones is being arraigned for murder. Jimmy Jones is 18 years old. He is not accompanied by counsel. When asked by the court where his attorney is, Jimmy says he doesn't know; he had a Public Defender assigned to his case but he can't remember her name. He also says he would really like to wait for her before deciding what to do. The judge responds, "Too bad, you should have thought of that yesterday. How do you plead, guilty or not guilty?" and requires Jones to decide. Is this action by the judge lawful? 725 ILCS 5/113-3.

**TOPIC:**

## Identification Procedures

**MANDATORY READING MATERIAL**

1. Handout: "Identification Procedures"
2. 725 ILCS 5/107A-2

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of State law:

1. Define identification procedures.
2. Define the identification procedures where witnesses are asked if they are able to identify the perpetrator of a crime: live lineups and photo lineups, simultaneous and sequential; showups.
3. Recognize that the Fifth Amendment privilege against self-incrimination does not apply where physical evidence is being taken from the accused.
4. Identify the types of things a suspect may be required to do under Illinois Supreme Court Rule 413.
5. Recognize circumstances where an accused would have the Sixth Amendment right to have counsel present during a live lineup or showup according to Kirby v. Illinois, 406 U.S. 682 (1972).
6. Recognize unfair line-ups and show-ups as due process violations.
7. Identify proper procedures for conducting an on-the-scene suspect identification (showup). **(STATE SPO)**
8. Identify proper procedures for conducting photo lineups. **(STATE SPO)**
9. Identify proper procedures for conducting a station house lineup [live lineup] (including sequential and simultaneous lineups). **(STATE SPO )**
10. Recognize the requirements of Illinois law regarding live lineup and photo spread procedures. 725 ILCS 5/107A-2 **(STATE OUTLINE II. And III.)**

## IDENTIFICATION PROCEDURES

**I. Definition:** Methods by which police procure physical evidence to link a suspect to a crime.

**A. Examples:** Line-ups, fingerprints, blood samples, voice samples, photographs.

**B. Procedures in which eyewitnesses are asked if they are able to identify the perpetrator of a crime: From 725 ILCS 5/107A-0.1 Definitions.**

**1. Live Lineup:** A police procedure in which a group of people are viewed by eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

**2. Photo Lineup:** Photo Identification or Photo Spread or Photo Array. Photographs are viewed by an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

**3. Simultaneous Lineup:** A live or photo lineup in which a group of persons is presented simultaneously to an eyewitness.

**4. Sequential Lineup:** A live or photo lineup in which each person or photograph is presented to an eyewitness separately, in a previously determined order, and removed from the eyewitness's view before the next person or photograph is presented.

**5. Showup:** Also called on-the-scene identification. Police procedure in which a suspected perpetrator is presented to an eyewitness at, or near, a crime scene for the purpose of obtaining an immediate identification.

\*The "evidence" that links the suspect to the crime is the identification by the eyewitness on that occasion. The suspect's physical appearance has linked them to the crime.

## **II. Fifth Amendment: Does not apply for these identification procedures.**

The Fifth Amendment privilege against self-incrimination does not apply to physical evidence. A suspect could not refuse to participate in one of the above procedures based on the argument that the result may incriminate him or her.

## **III. Fourth Amendment considerations: Reasonableness.**

Illinois Supreme Court Rule 413 provides that a person may be required to appear in a line-up, speak for identification, be fingerprinted, pose for photographs, try on clothing, give specimens from under fingernails, give blood and hair and other materials from the body that involve no unreasonable intrusion, provide a handwriting sample and submit to reasonable physical or medical inspection.

## **IV. Sixth Amendment Right to Counsel: must accused's counsel be present during the identification procedure?**

A. **Wade-Gilbert** rule: **After indictment**, the suspect has an **absolute right to counsel** at any pretrial **confrontation** procedure. Any post-indictment identification which occurs without the presence of counsel (except where effective waiver) is **per se inadmissible as evidence** at trial. **U.S. v. Wade**, 388 U.S. 218 (1967) and **Gilbert v. California**, 388 U.S. 263 (1967).

B. **Kirby v. Illinois**, 406 U.S. 682 (1972): the Court refused to extend the **Wade--Gilbert** rule to **line-ups** conducted **before formal proceedings** have been started against the suspect.

1. **Rule:** right to counsel at **line-ups and show-ups** is limited to time "at or after the initiation of **adversary judicial criminal proceedings** - whether by **formal charge, preliminary hearing, indictment, information or arraignment.**"

2. Most lower courts have held that the issuance of an **arrest warrant** triggers the **Wade-Gilbert** right to counsel. Illinois is included.

## VI. Due Process: Considerations of Fairness

- A. **Stovall v. Denno**: Independent of the right to counsel argument, a suspect may claim that a confrontation in a line-up or show-up was just plain unfair. The question is whether the confrontation *"was so unnecessarily suggestive and conducive to irreparable mistaken identification"* as to deny a suspect due process of law.
- B. Test for whether or not show up was fair: consider the **"totality of the circumstances"** surrounding the confrontation.

### Guidelines for Fairness - Proper Procedures

- A. Show-ups
  1. Courts have more concern because of suggestive nature of process, victim sees only one or two subjects, often in handcuffs or squad car.
  2. Most often identification form used by police witnesses. The officer who catches the subject holds him until the officer who chased him comes to scene.
  3. **Supreme Court has approved where critically injured witness**, bring subject into hospital or bring to ambulance door, let victim look at subject.
  4. Only conduct show-up during the **"Initial Investigation"** i.e., prior to arriving at the station, or wherever you go to do reports. Once Initial investigation is completed contact the responsible Detective Division to request advice and assistance.

## B. Live Lineups

1. Non-suspects, also called "distracters" or 'fillers," must have similar characteristics (sex, age, height, weight, color, clothing, etc.)
2. Do not allow witness to see participants in line-up prior to the identification procedure (e.g. not in hallway in handcuffs).
3. Every person in the line-up should be required to do the same things (e.g. if one is asked to speak, they all are; if one is asked to try on clothing, they all are).
4. Officers should avoid leading witnesses.
5. Record each identification individually, get signed statements from all viewers.
6. Photograph line-up.
7. One witness at a time and witnesses should not be talking and influencing each other, particularly children.
8. Keep those who have viewed the lineup separate from those who have yet to view the lineup.
9. Do not let subject see victims or witness, conceal identity as much as possible. This may protect victim from possible intimidation or abuse in court.
10. **In a live lineup, Illinois law requires no less than 3 fillers/non-suspects.** 725 ILCS 5/107A-2(f)(3)(D). If practicable, the law states that at least 5 fillers should be presented.

**Illinois law requires 5 fillers/non-suspects for photo lineups.** 725 ILCS 5/107A-2(f)(3)(C).



C. Some additional Requirements: Illinois Law

**Illinois Law: 725 ILCS 5/107A-2 Lineup Procedures.**

**All lineups shall be photographed or otherwise recorded.**

These photographs shall be disclosed to the accused and his or her defense counsel during discovery proceedings as provided the Illinois Supreme Court Rules. All photographs of suspects shown to an eyewitness during the photo spread shall be disclosed to the accused and his or defense counsel.

**Each eyewitness who views a live or photo lineup or photo shall be instructed and sign a form** which includes information that the perpetrator might not be in the live or photo lineup and the eyewitness should not feel compelled to make identification

**Suspects in a lineup should not appear to be substantially different from fillers or distracters in** the live or photo lineup based on the eyewitness, previous description of the perpetrator, or based on other factors that would draw attention to the suspect.

## Identification Procedures: Evaluation Questions

1. What are “identification procedures?”
2. What do we call a police procedure in which a group of persons is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime?
3. What do we call the police procedure in which photographs are displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime?
4. What is the difference between a “simultaneous lineup” and a “sequential lineup”?
5. What do we call police procedure in which a suspected perpetrator is presented to an eyewitness at, or near, a crime scene for the purpose of obtaining an immediate identification?
6. An accused cannot prevent being viewed in a line-up by invoking the privilege against self-incrimination from which constitutional amendment?
7. What does Illinois Supreme Court Rule 413 say a suspect can be required to do?
8. Complete this statement. In the case of **Kirby v. Illinois**, the United States Supreme Court decided in part that a suspect would have the right to have counsel present during a line-up or show-up if:
9. Mr. Smith was arrested for armed robbery and later indicted. The police put Mr. Smith in a line-up. Mr. Smith’s attorney was not permitted to be present to observe. Mr. Smith was identified by the victim of the crime. If this identification by the victim is excluded from trial, what would most likely be the reason?

10. Mr. Smith was arrested for armed robbery and later indicted. The police put Mr. Smith in a line-up, and he was identified by a witness to the crime. At the line-up the police did not allow Mr. Smith to have his attorney present. This post-indictment line-up without counsel present would violate Mr. Smith's constitutional rights under which amendment?
11. If an identification procedure is not done fairly, what type of constitutional violation is this?
12. Mr. Smith was arrested for armed robbery and later indicted. The police put Mr. Smith in a line-up. Mr. Smith's attorney was present to observe. Among the individuals participating in the line-up, Mr. Smith was the only person who appeared wearing a jail uniform. Mr. Smith was identified by a witness to the crime. If this identification by the witness is excluded from trial, what would most likely be the reason?
13. Mr. Smith was arrested for armed robbery and later indicted. The police put Mr. Smith in a line-up. Mr. Smith's attorney was permitted to be present to observe. Among the participants in the line-up, Mr. Smith was the only one who was required to speak the words the victim heard, "Your money or your life." Mr. Smith was identified by the victim of the crime. If this identification by the victim is excluded from trial, what would most likely be the reason?
14. What is the minimum number of fillers/non-suspects that must appear in a live lineup?  
What is the minimum number of fillers/non-suspects that must be included in a photo lineup?
15. What are some other things Illinois law requires regarding line-ups?

## Review

- A. Identification procedures are methods by which police procure evidence to link a suspect to a crime.
- B. Eyewitness identifications as a result of lineups, showups and photo identifications are types of identification procedures.
- C. The results of identification procedures are evidence.
- D. The Fifth Amendment privilege against self-incrimination may not be invoked by a suspect required to participate in an identification procedure; the Fifth Amendment only applies to testimonial evidence.
- E. Illinois Supreme Court Rule 413
- F. The Sixth Amendment right to counsel may be invoked by a suspect who is being required to participate in a line-up or show-up if “adversary judicial proceedings” have been initiated.
- G. Police doing lineups or showups must also be careful that the process is done fairly, i.e. not in violation of the suspect’s due process rights.
- H. Chapter 725 ILCS 5/107A-2 provides the law on line-ups.
- I. When a line-up or show-up is done improperly, i.e. without counsel present when necessary or in violation of the suspect’s due process rights, any eyewitness identification that occurs will be inadmissible as evidence at trial.
- J. Chicago Police See Department Directives.

**TOPIC:**

Civil Rights and Civil Liability (5 Hours)

**MANDATORY READING MATERIAL:**

1. Handout Materials

**STATE STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Recognize circumstances which give rise to tort liability of a peace officer, his/her superiors, and his/her employing agency in the following situations:
  - a. Driving/Pursuits
  - b. Use of Force
  - c. Negligence
  - d. False Arrest/Imprisonment
  - e. Assault
  - f. Contacts, Investigative stops and arrests
2. The trainee will be able to define “indemnification.”
3. The trainee will identify situations where a local governmental unit is responsible for torts of a peace officer.
4. The trainee will identify when the governmental body is relieved of liability for the torts of a peace officer.
5. The trainee will identify circumstances that are covered by the Good Samaritan Act.
6. The trainee will recognize circumstances involving police officers who violate Federal Civil Rights Laws (18 U.S.C sec. 241-242; 42 U.S.C. sec. 1983).

## CIVIL COURT

### **TORT**

A civil wrong for which the court will provide a remedy in the form of an action for damages  
**\$ FOR THE VICTIM**

### **DEFINITION**

The injured person (Plaintiff)

### **MOVING PARTY**

VICTIM CAN DROP CASE  
IF THEY WANT TO-CAN  
SETTLE CASE ALSO

### **CONTROLLING PARTY**

"Preponderance of the Evidence"  
Doubt"  
(More likely than not; 51%)

### **BURDEN OF PROOF**

### ACTION:

Arrest Knowing No  
Probable Cause

Excessive Force

Unlawful Use of  
Deadly Force

Auto Accident  
(not from recklessness)

### NEGLIGENCE (SPO DR100)

### INTENTIONAL TORT:

False Arrest

Assault and Battery

Wrongful Death

Negligence

## CRIMINAL COURT

### **CRIME**

An offense against  
the State-THE PEOPLE

State-initiated (Cook County  
or U.S. Attorney)

VICTIM IS WITNES CANNOT  
DROP CASE ON THEIR OWN

"Beyond a Reasonable  
(No other reasonable explanation)

### CRIME:

Unlawful Restraint

Assault and Battery

Homicide Offense

No Crime

In tort law is defined as a breach of a legal duty owed to the plaintiff by an action of defendant which falls below the reasonable standard of care and which is the proximate cause of an injury to the plaintiff.

Plaintiff in a civil action for NEGLIGENCE must show:

1. a duty is owed to the plaintiff,
2. violation of this duty occurred,
3. the harm was caused by the defendant, and
4. the plaintiff suffered damages as a result.

For example, an officer on ordinary patrol has a DUTY to operate the vehicle as a reasonable driver. If the officer BREACHES this duty, by failing to obey the rules of the road for example, and this breach CAUSES an accident, which results in INJURIES or other damages, liability for NEGLIGENCE results.

#### DAMAGES:

Two types: Compensatory damages and Punitive damages-

Compensatory - goal is to bring the person back to where they were (as closely possible) before the wrongful act; purposes are to “compensate” and “reimburse” the plaintiff.

Punitive - goal is to punish the wrongdoer for their action in the hope of deterring such actions in the future; purposes are “punishment” and “deterrence.”

#### INDEMNIFICATION:

If the plaintiff wins, who has to pay the damages?

(65 ILCS 5/1-4-5) - Indemnification for Injuries Caused by Police Officer: In case any injury to the person or property of another is caused by a member of the police department **while the member is engaged in the performance of his or her duties** as a police officer, the municipality on whose behalf the (P.O.) is performing his or her duties as a police officer shall indemnify the police officer for any judgment recovered against him or her as a result of such injury, [STATE SPO 3] except where the injury results from the willful misconduct of the police officer.

**\*NO INDEMNIFICATION FOR PUNITIVE DAMAGES**

**Factors that relate to whether the Department/employer is liable:**

Were you acting within the **scope of your employment** in the course of duty (doing what your employer hired you to do)? **RESPONDEAT SUPERIOR** doctrine.

Were you within your jurisdiction (within the boundaries you were hired to protect)?

Did you engage in willful misconduct?

For example, did you go on a personal errand in another town while on duty and get in an accident? Did you operate the vehicle in a reckless manner, consciously disregarding the risk to others, thus engaging in willful misconduct?

REMEMBER: EVEN THOUGH YOU MIGHT BE INDEMNIFIED, YOU ARE STILL A PARTY TO THE ACTION. YOU STILL HAVE TO DEFEND YOUR ACTIONS.

IMMUNITY ACTS:

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT

(745 ILCS 10/2-202) - Execution or Enforcement of Law: A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.

GOOD SAMARITAN ACT FOR LAW ENFORCEMENT

(745 ILCS 49/70) - Law enforcement officer or firemen; exemption from civil liability for emergency care: Any law enforcement officer or fireman...who in good faith provides emergency care without fee to any person shall not, as a result of his acts or omissions, except willful and wanton misconduct on the part of the person, in providing the care, be liable to a person to whom such care is provided for civil damages.

\*Note: whether an immunity statute applies is up to the judge. Immunity acts do not stop lawsuits from being filed. If the act applies, the judge will dismiss the case.



## FEDERAL CIVIL RIGHTS LAWS

### CRIMINAL:

18 U.S.C. Section 242: " Whoever under color of any law willfully subjects any (person) to the deprivation of any rights or to different (treatment) by reason of such (person) being an alien, or by reason of his color, or race shall be fined not more than \$1,000 or imprisoned not more than one year or both; and if bodily injury results, shall be fined or imprisoned not more then ten years, and if death results, shall be subject to imprisonment for life."

18 U.S.C. §241: "If two or more persons conspire to injure, oppress, threaten, or intimidate any (person) in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same...they shall be fined not more than \$10,000 or imprisoned not more than ten years or both, and if death results, they shall be subject to imprisonment for...life."

### CIVIL:

42 U.S.C. § 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage subjects. . . any (person) to the deprivation of any (Constitutional or federal) rights, privileges, or immunities shall be liable to the injured in an action at law, suit in equity, or other proper proceeding for redress,

**\*Can apply on or off duty.**

What makes a federal civil rights lawsuit or basis for prosecution? Not all **torts** are 42 U.S.C. § 1983 actions. The alleged harm must state a **Constitutional violation**.

Examples of Constitutional Violations:

Excessive Force: FOURTH AMENDMENT

Coercing Confessions: FIFTH AMENDMENT

Arrest Knowing No Probable Cause: FOURTH AMENDMENT

Improper use of Deadly Force: FOURTH AMENDMENT

Interfering with access to Attorney: SIXTH AMENDMENT

Beating prisoners or failing to provide medical care: EIGHTH AMENDMENT

#### QUALIFIED IMMUNITY:

When a government official performs a discretionary function that he reasonably believes does not violate a clearly established right, then he cannot be sued for any injuries arising from that action . Harlow v. Fitzgerald, 457 U.S. 800 (1982).

#### NON-ACTOR LIABILITY:

"One who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge." Byrd v. Brishke, 466 F2d 6 (7th Cir 1972).

Establishing non-actor liability: O'Neil v.Krenimnski, 839 F2d 9 (2ndCir1988). (lockup case):

1. mere presence not sufficient
2. knowledge or deliberate indifference
3. realistic opportunity to stop.

**\*Can apply on or off duty.**

### **Civil Liability: Evaluation Questions**

1. “A civil wrong for which the court will provide a remedy in the form of damages” defines what?
2. If a police officer carelessly operates a vehicle while on patrol, and causes an accident which injures a citizen, what type of lawsuit/tort liability might result?
3. If a police officer arrests a person knowing that no probable cause to arrest exists, what type of lawsuit/tort liability might result?
4. If a police officer negligently uses deadly force and causes the death of a citizen, what type of lawsuit/tort liability might result?
5. If, in the course of making an arrest based upon probable cause, a police officer uses excessive force against a citizen and injures that citizen, what type of lawsuit/tort liability might result?
6. For lawsuits which arise out of the performance of duty as a police officer, as long as the injury was not from the willful misconduct of the police officer, the municipality must pay any damages assessed against the police officer in civil court. What is this concept called?

7. Officer Smith and Officer Jones are on patrol, on duty, within their jurisdiction. They decide to look for a vehicle to stop. The officers see a car driven by a black teenage male with one black teenage male passenger. For no other reason than the area is primarily white, the officers order the driver to pull over. When asked why they are in the area, the boys reply that they have just graduated from the local high school and are on their way to a party. The officers pull the boys out of the car and perform strip searches of both of them. When one of the boys questions the officers' actions, Officer Smith punches him. Not finding any contraband or weapons, the boys are eventually permitted to drive away. Both officers know they acted illegally. It turns out that both boys have attorneys as parents. A lawsuit results and punitive damages are assessed against both officers. Will the officers be indemnified by their department for the punitive damages?
8. As long as the action arose from the performance of duty as a police officer, the officer's municipality must pay compensatory damages assessed against the officer in a civil court. However, the municipality will not pay damages that result from the willful misconduct of an officer. The type of damages that the municipality has no obligation to pay is called:
9. The Good Samaritan Act for police officers states that:

10. Officer Jones is off-duty and on his way home from work in his car. He sees a traffic accident and pulls over to see if he can be of any assistance. One of the drivers is not breathing and so Officer Jones decides to attempt to perform CPR. Officer Jones performs the procedure to the best of his ability, exactly as he had been trained to in the Academy. Nonetheless, the man dies. The man's family sues Officer Jones alleging negligence. Which immunity act which would apply in this situation to allow the judge to dismiss the lawsuit?

### **Federal Civil Rights Act: Evaluation Questions**

11. What type of misconduct may result in a lawsuit or prosecution under the Federal Civil Rights Act?
12. In taking Mr. Jones into custody, Officer Smith uses excessive force. May Officer Smith be sued or prosecuted under the Federal Civil Rights Act?
13. Officer Smith is in pursuit of Mr. Jones because Mr. Jones has just committed a burglary. Officer Smith knows that Mr. Jones is not armed or otherwise dangerous. Officer Smith unlawfully uses deadly force by firing at Mr. Jones in order to prevent his escape. Officer Smith shoots and kills Mr. Jones. May Officer Smith be sued or prosecuted under the Federal Civil Rights Act? Why?

14. Detective Smith arrests Mr. Jones for murder. Detective Smith wants Mr. Jones to confess to the crime, but Mr. Jones says he does not want to answer any questions. Because Mr. Jones will not speak voluntarily, Detective Smith decides to try to coerce the confession out of Mr. Jones by threatening him. Mr. Jones confesses. May Detective Smith be sued or prosecuted under the Federal Civil Rights act for the way he obtained the confession? Why?
15. Detective Smith arrests Mr. Jones for murder. Detective Smith wants Mr. Jones to answer questions about the crime, but Mr. Jones says he wants to wait for his attorney to be present. The attorney arrives and asks Detective Smith if he may see Mr. Jones. Knowing that it is less likely that Mr. Jones will confess if he gets to meet with his attorney, Detective Smith lies and tells the attorney that Mr. Jones has been taken to another Area. Believing this, the attorney leaves without ever meeting with Mr. Jones. May Officer Smith be sued or prosecuted under the Federal Civil Rights Act for interfering with the right of Mr. Jones to meet with his lawyer? Why?
16. In taking Mr. Jones into custody, Officer Smith uses excessive force. While this occurs, Officer Barnes stands by and does nothing, although he reasonably could have intervened to help Mr. Jones. May Officer Barnes be sued or prosecuted under the Federal Civil Rights Act? How?

17. Detective Smith arrests Mr. Jones for murder. Detective Smith wants Mr. Jones to confess to the crime, but Mr. Jones says he does not want to answer any questions. Because Mr. Jones will not speak voluntarily, Detective Smith decides to try to coerce the confession out of Mr. Jones by threatening him. Mr. Jones confesses. While this occurs, Detective Barnes stands by and does nothing, although he reasonably could have intervened to help Mr. Jones. May Detective Barnes be sued or prosecuted under the Federal Civil Rights act? How?
18. Detective Smith arrests Mr. Jones for murder. Detective Smith wants Mr. Jones to answer questions about the crime, but Mr. Jones says he wants to wait for his attorney to be present. The attorney arrives and asks Detective Smith if he may see Mr. Jones. Knowing that it is less likely that Mr. Jones will confess if he gets to meet with his attorney, Detective Smith lies and tells the attorney that Mr. Jones has been taken to another Area. Believing this, the attorney leaves without ever meeting with Mr. Jones. While this occurs, Detective Barnes stands by and does nothing, although he reasonably could have intervened to help Mr. Jones. May Detective Barnes be sued or prosecuted under the Federal Civil Rights act? How?
19. Officers may be held liable for the constitutional violations of other officers. If one officer has a realistic opportunity to prevent a constitutional violation by another officer, that officer has a duty to make a reasonable attempt to protect the citizen. What is this concept called?

**TOPIC:**

Juvenile Law (1 of 4)

**MANDATORY READING MATERIAL:**

## Illinois Compiled Statutes:

Definitions	705 ILCS 405/1-3
Neglected or Abused Minor	705 ILCS 405/2-3
Dependent Minor	705 ILCS 405/2-4
Minor Requiring Authoritative Intervention	705 ILCS 405/3-3
Addicted Minor	705 ILCS 405/4-3
Delinquent Minor	705 ILCS 405/5-105(3)
Rights of Parties to Proceedings	705 ILCS 405/1-5
Confidentiality of Law Enforcement Records	705 ILCS 405/1-7
Confidentiality and Accessibility of Juvenile Court Records	705 ILCS 405/1-8

Handout - Juvenile Court Act Worksheet

**STUDENT PERFORMANCE OBJECTIVES**

1. Recognize the purpose and policy of the Juvenile Court Act (705 ILCS 405/1-2) (State SPO 1)
2. Define the following terms (State SPO 2)
  - a. Adult, 705 ILCS 405/1-3(2)
  - b. Detention, 705 ILCS 705 ILCS 1-3(9)
  - c. Emancipated Minor, 705 ILCS 405/1-3(7)
  - d. Minor, 705 ILCS 405/1-3(10)
  - e. Parents, 705 ILCS 405/1-3(11)
  - f. Shelter, 705 ILCS 405/1-3(14)
  - g. Delinquent Minor, 705 ILCS 405/5-105(3)
  - h. Neglected or Abused Minor, 705 ILCS 405/2-3
  - I. Dependent Minor, 705 ILCS 405/2-4
  - j. Minor Requiring Authoritative Intervention, 705 ILCS 405/3-3
  - k. Addicted Minor, 705 ILCS 405/4-3
  - l. Juvenile Police Officer (405/5-105(9))
3. Identify the legal restriction on fingerprinting, photographing, and the maintenance of arrest information on juveniles (705 ILCS 405/1-7). (State SPO 9)
4. Trainees will identify the constitutional rights afforded juveniles in juvenile-court proceedings. (705 ILCS 405/1-5)



## ***Juvenile Court Act Worksheet***

### ***Hour 1***

First define the different types of minors within the jurisdiction of the Juvenile Court:

#### **1. Define “Neglected Minor” (405/2-3(1)):**

Neglected Minor (405/2-3 (1))

- ( a ) under 18, not receiving proper or necessary support, education, medical or other care necessary for well-being, including food, shelter, clothing, or who is abandoned; or
- ( b ) under 18, environment injurious to welfare; or
- ( c ) Newborn with controlled substance in system; or
- ( d ) under 14 and left alone for unreasonable period of time (see statute for factors to consider).

Example:

#### **2. Define “abused minor” (405/2-3(2)):**

Abused Minor ( 405/2-3 (2) )  
under 18, parent, etc.:

- ( a ) inflicts or allows physical injury to minor; or
- ( b ) creates substantial risk of physical injury to minor; or
- ( c ) commits or allows to be committed a sex offense against minor; or
- ( d ) commits or allows torture of minor; or
- ( e ) inflicts excessive corporal punishment.

Example:

**3. Define “dependent minor” ( 405/2-4):**

Dependent Minor (405/2-4) under 18 and

- ( a ) without parent, guardian, legal custodian; or
- ( b ) without proper care because of physical or mental disability of parent, guardian, or custodian; or
- ( c ) without care through no fault of parent, etc. and parent asks that court take minor for no longer than 6 months, without termination of rights; or
- ( d ) parent, etc. with good cause wishes to be relieved of all residual rights, and desires appointment of guardian with power to consent to adoption.

Example:

**4. Define “minor requiring authoritative intervention” (405/3-3):**

MRAI (405/3-3)

- (1) under 18, and
  - (a) absent from home without consent of parent, guardian, or custodian; or
  - (b) beyond control of parent, etc. in circumstances which constitute substantial and immediate danger to minor's physical safety;
- AND
- (2) who, after being taken into limited custody, refuses to go home, And no agreement can be reached between minor and parent about Alternative placement.

Example:

**5. Define “addicted minor” (405/4-3):**

**Addicted Minor (405/4-3)**

Any minor (under 21) who is an addict or alcoholic as defined in the Alcoholism and Other Drug Abuse Dependency Act.

Example:

**6. Define “delinquent minor” (405/5-105(3)):**

**Delinquent Minor (405/5-105(3))**

Any minor who prior to his or her 18<sup>th</sup> birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance classified as a misdemeanor offense.

Example:

**7. Define “minor” (405/1-3(10)):**

**8. Define “adult” (405/1-3(2)):**

**9. Explain what happens at the “adjudicatory hearing” (405/1-3(1)):**

**10. Explain what happens at the “dispositional hearing” (405/1-3(6)):**

11. Define “parent” (405/1-3(11)):

Is an adoptive father or mother a “parent” according to the act?

Is a parent whose rights have been terminated under the law a “parent” according to the act?

12. What are “residual parental rights and responsibilities” (405/1-3(13))?

13. Define “shelter” (405/1-3(14)). Would a juvenile detention center fit the definition of “shelter care?”

14. Define “emancipated minor” (405/1-3(7)):

15. Rights of parties to proceedings (405/1-5): What kinds of rights to the parties have in proceedings?

Rights of parties to proceedings.

- \*right to be present

- \*right to be heard

- \*right to present evidence

- \*right to cross-examine witnesses

- \*right to examine files and records

- \*Sixth Amendment right to counsel, court appointed if necessary

\*Fifth Amendment privilege against self-incrimination (right to remain silent).

Note on case law and rights of juvenile delinquents: The United States Supreme Court in 1967 in **In re Gault** held that an alleged delinquent minor has the following constitutional rights: right to notice of charges, right to counsel, privilege against self-incrimination, right to confront witnesses, right to cross-examine witness. In **Gault** the court did not decide whether the juvenile had the right to a jury trial or bail. The court refused to extend the right to a jury trial to juveniles in 1971 in **McKiever v. Pennsylvania**.

**\*No constitutional right to bail.**

**\*No constitutional right to jury trial.**

The Supreme Court said the juvenile has no constitutional right to bail or jury. **This does not prohibit a state from choosing to grant these rights, however.**

16. Transmission of photos and fingerprints (405/1-7(B)(2)): If a 16 year-old is arrested for Unlawful Use of Weapons do his fingerprints get transmitted to the State Police?
17. Disclosure of identity of minor (405/1-7(E)): Is it lawful for law enforcement to disclose the identity of minors?
18. Confidentiality and accessibility of juvenile court records (405/1-8): Are the records of minors generally available to law enforcement and courts? Generally, are they available to the public; are there exceptions?

**TOPIC:**

Juvenile Law (2 of 4)

**MANDATORY READING MATERIAL:**

Illinois Compiled Statutes	
Purpose and Policy	705 ILCS 405/5-101
Exclusive Jurisdiction	705 ILCS 405/5-120
Concurrent Jurisdiction	705 ILCS 405/5-125
Excluded Jurisdiction	705 ILCS 405/5-130
Transfer of Jurisdiction	705 ILCS 405/5-805
Taking into Custody	705 ILCS 405/5-401
Duty of Officer	705 ILCS 405/5-405
Non-secure Custody	705 ILCS 405/5-410
Kinds of Sentencing Orders	705 ILCS 405/5-710
Duration of Wardship and Discharge of Proceedings	705 ILCS 405/5-755

Worksheet-Juvenile Court Act Worksheet

**STUDENT PERFORMANCE OBJECTIVES - “S.P.O.”s**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Trainees will recognize the purpose and policy of the law as it relates to treatment of juvenile offenders (delinquent minors). (405/5-101)
2. Trainees will identify certain terminology as it applies to delinquent minors. (405/5-105)
3. (STATE SPO 3) Trainees will identify legal restrictions concerning the criminal prosecution of juveniles. (405/5-120; 405/5-125; 405/5-130; 405/5-805)
4. (STATE SPO 4) Trainees will recognize circumstances when apprehending a juvenile without a court order is authorized. (405/5-401)
5. (STATE SPO 5) Trainees will identify proper procedures to follow in apprehending a juvenile offender. (405/5-405)
6. (STATE SPO 8) Trainees will identify the restrictions on places and conditions of confinement of juveniles. (405/5-410)
7. Trainees will recognize the court proceedings that apply when a delinquent minor has been charged (including the standard of proof, types of sentencing orders, and duration of wardship). (405/5-710, 405/5-755)

## ***Juvenile Court Act Worksheet***

### ***HOOR 2: DELINQUENT MINORS***

1. Define "Delinquent Minor." 405/5-105(3)
  
  
  
  
  
  
  
  
  
  
2. Is a 12 year-old who commits murder a Delinquent Minor? *See 405/5-120; 405/5-125; 405/5-130; 405/5-805. Recall also the defense of infancy, 720 ILCS 5/6-1.*

May she be tried as an adult?

3. Is a 16 year-old who commits auto theft a Delinquent Minor? *See 405/5-130. She would not fit any of the Excluded Jurisdiction sections.*

Should she be processed as an adult or a juvenile?

4. Is a 16 year-old, who commits First Degree Murder, a Delinquent Minor? Should he be tried as an adult? *See 405/5-130(1)(a). He is excluded from the jurisdiction of the juvenile court (these are crimes for which the law lowered the age to be tried as an adult).*

5. Should a 15 year-old, arrested for underage drinking(status offender) be placed in the district lockup or held in secure custody? 405/5-401(3).

6. What is the minimum age a minor must reach to be placed in a Detention Facility. 405/5-410(2)(a).

7. How long may a juvenile arrestee under 12 years of age be held in secure custody/detained in a county jail or municipal lockup? 405/5-410(2)(a).

*See also (2)(c): 12 or older: 12 hours*

*12 or older and "Crime of Violence" und 20 ILCS 301/1-10: 24 Hours.*

*(2)(c)(i) The period of detention is deemed to have begun once the minor has been placed in a locked room or cell or handcuffed to a stationary object in a building housing a county jail or municipal lockup.*

8. Should a minor under 18 be confined in the municipal lockup with adults? 405/5-410(2)(c)(ii)and(v).

9. Within how many hours from the time of arrest must a Detention Hearing occur? 405/5-415.

10. A trial must occur within how many days from the date a Delinquency Petition is filed? 405/5-601.



11. What is the standard of proof at a trial in order to find a minor to be Delinquent?  
*405/1-3(1).*
12. At the sentencing hearing, what might the court decide to do with the delinquent minor?  
*405/5-710.*
13. List the order of the proceedings regarding a Delinquency Petition.
14. Until reaching what age does a Delinquent Minor may remain a ward of the court?  
*(405/5-755).*

**TOPIC:**

Juvenile Law (3 of 4)

**MANDATORY READING MATERIAL:**

Illinois Compiled Statutes:

Abused, Neglected and Dependent Minors

Persons Required to Report Abused and Neglect	325 ILCS 5/4
Neglected or Abused Minor	705 ILCS 405/2-3
Dependent Minor	705 ILCS 405/2-4
Taking into Custody	705 ILCS 405/2-5
Duty of Officer	705 ILCS 405/2-6
Temporary Custody	705 ILCS 405/2-7
Investigation; release	705 ILCS 405/2-8
Setting of Temporary Custody Hearing	705 ILCS 405/2-9
Temporary Custody Hearing	705 ILCS 405/2-10
Findings and Adjudication	705 ILCS 405/2-21
Kinds of Dispositional Orders	705 ILCS 405/2-23

Minor Requiring Authoritative Intervention

Taking into Limited Custody	705 ILCS 405/3-4
Taking into Temporary Custody	705 ILCS 405/3-7
Duty of Officer	705 ILCS 405/3-8
Temporary Custody; Shelter Care	705 ILCS 405/3-9
Investigation; Release	705 ILCS 405/3-10
Setting of Shelter Care Hearing	705 ILCS 405/3-11
Shelter Care Hearing	705 ILCS 405/3-12
Date for Adjudicatory Hearing	705 ILCS 405/3-16
Findings and Adjudication	705 ILCS 405/3-22
Dispositional Hearing	705 ILCS 405/3-23

## **STUDENT PERFORMANCE OBJECTIVES - “S.P.O.”s**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Trainees will recognize circumstances subject to Abused and Neglected Child Reporting Act. 325 ILCS 5/4.
2. Trainees will identify the standards, procedures, duties, and court proceedings that apply when an abused, neglected or dependent minor has been taken into custody. 705/405/2-5 to 2-10; 405/2-21; 405/2-23.
3. (STATE SPO 6 ) Trainees will identify when law enforcement officers may take limited custody of a minor [requiring authoritative intervention] and the duties and restrictions with this action. (405/3-4).
4. Trainees will identify the standards, procedures, duties, and court proceedings that apply when a minor requiring authoritative intervention has been taken into custody. 705 ILCS 405/3-4; 405/3-7 to 3-12; 405/3-16; 405/3-22; 405/3-23.

*Juvenile Court Act Worksheet*

***HOUR 3:***

***ABUSED, NEGLECTED, OR DEPENDENT MINORS***

1. According to the Abused and Neglected Child Reporting Act, when is a law enforcement officer required to report abuse or neglect? *325 ILCS 5/4.*
  
2. May an officer take the above into Temporary Custody with probable cause? Is this an arrest of the minor? *405/2-5(1); 405/2-5(3).*
  
3. Upon taking the above minors into Temporary Custody, who must an officer notify? *405/2-6(1).*
  
4. Upon taking the above minors into Temporary Custody, to whom must the officer deliver the minor without unnecessary delay? *405/2-6(1)(a); 405/2-6(1)(b).*
  
5. After in Temporary Custody, who investigates to determine if further custody is warranted? *405/2-8.*

6. Unless released, within how many hours must a Temporary Custody Hearing occur?  
*405/2-9.*
7. What is the standard of proof a court uses to find that a minor is Neglected, Abused or Dependent? *405/1-3 (1).*
8. Define Minor Requiring Authoritative Intervention. *405/3-3 (in hour 1).*
9. How long may a Minor Requiring Authoritative Intervention be held in Limited Custody?  
*405/3-4(e)405/3-4(a)-(d).*
10. Would it be proper to place a Minor Requiring Authoritative Intervention in detention?  
*405/3-4(f).*
11. What is the legal standard of proof to find that a minor is a Minor Requiring Authoritative Intervention? *405/1-3(1).*

**TOPIC:**

Juvenile Law (4 of 4)

**MANDATORY READING MATERIAL:**

## 1. Illinois Compiled Statutes:

Addicted Minor	705 ILCS 405/4-3
Taking into Custody	705 ILCS 405/4-4
Duty of Officer	705 ILCS 405/4-5
Temporary Custody	705 ILCS 405/4-6
Investigation; release	705 ILCS 405/4-7
Setting of Shelter Care Hearing	705 ILCS 405/4-8
Shelter Care Hearing	705 ILCS 405/4-9
Date for Adjudicatory Hearing	705 ILCS 405/4-13
Findings and Adjudication	705 ILCS 405/4-19
Dispositional Hearing	705 ILCS 405/4-20
Kinds of Dispositional Orders	705 ILCS 405/4-21

## 5. Worksheet-Juvenile Court Act

**STUDENT PERFORMANCE OBJECTIVES - “S.P.O.”s**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Trainees will define “addicted minor.” 705 ILCS 405/4-3.
2. Trainees will identify the standards, procedures, duties, and court proceedings which apply when an addicted minor has been taken into custody. 705 ILCS 405/4-4 to 4-9; 405/4-13; 405/4-19 to 4-21.

#### ***HOOR 4: ADDICTED MINORS***

1. Define “Addicted Minor.” *405/4-3.*
2. Is a 17 year-old who is addicted to heroin defined as an “addicted minor” under the Juvenile Court Act? A 20 year-old alcoholic? *See 405/4-3.*
3. May an officer lawfully take an addicted minor into protective custody? *405/4-4.*
4. Is the taking of a minor into protective custody under 405/4-4 an “arrest” of the minor? *405/4-4(3).*
5. If an officer takes an addicted minor into protective custody, what are the obligations of the officer under the Juvenile Court Act. *405/4-5.*

6. If the juvenile police officer decides that the addicted minor will not be released to the parents and will instead be held in “Temporary Custody,” is it lawful to detain this person in a Juvenile Detention Center? Why or why not? 405/4-6.
7. If the addicted minor was placed in “Temporary Custody,” who investigates to determine whether such custody should continue? 405/4-7.
8. Within how many hours from the time an addicted minor is taken into temporary custody is the minor entitled to a shelter care hearing? 405/4-8.
9. What happens at the shelter care hearing? 405/4-9.
10. If held in shelter care (not released to the parents) pending the adjudicatory hearing, within how many days must the adjudicatory hearing occur? If this time period lapses, must the minor be released from shelter care? 405/4-13(a)(2).



11. What happens at the adjudicatory hearing? *405/4-19.*
12. If the minor is determined to be an addicted minor, what happens at the next stage, the “dispositional hearing?” *405/4-20.*
13. Once determined by a judge to be an addicted minor, would a proper order of disposition be for the judge to release the minor under the supervision of his or her parents?  
*405/4-21.*
14. What are the three hearings involving an addicted minor, in the correct order? *shelter care hearing, adjudicatory hearing, dispositional hearing.*

## **Juvenile Court Act Summary**

**Minor** - Under 21; the Juvenile Court has jurisdiction over persons under 21.

**Neglected Minor**- Under 18, not having needs met. Example, 3 year-old left alone 5 hours.

**Abused Minor** – Under 18, suffering harm. Example, 17 year-old boy beat up by mom's live-in boyfriend.

**Dependent Minor** – Under 18, has no one to care for them; not an allegation of parental fault. Example, 12 year-old girl's mom becomes mentally ill, leaving her with no one to care for her. She is now dependent on the state for care.

**Minor Requiring Authoritative Intervention** – Under 18, absent from home without consent of parent, beyond control of parent, danger to minor, refuses to go home after Limited Custody. If a child has permission to stay overnight with a friend, he is not an MRAI. Limited Custody – 6 hours.

**Addicted Minor** – Under 21, addicted to drugs and/or alcoholic. Examples, 17 year-old heroin addict; 20 year-old alcoholic.

### **Proceedings for all minors except the Delinquent Minor**

Peace officers and DCFS may take any of the above into Temporary Custody/Protective Custody with reasonable grounds to believe the minor is as defined as one of the above. This is not an arrest. Ch. 325 mandates reporting of abuse or neglect.

These minors do not belong in "detention" (physically restricted).

Notification – parents or persons legally responsible, DCFS

Delivery – to "nearest juvenile police officer."

Further investigation – "probation officer or other public officer so designated by the court."

Temporary Custody or Shelter Care Hearing – within 48 hours.

Petition – filed by State.

Adjudicatory Hearing – like a trial, the fact-finding stage. Standard of Proof – preponderance of the evidence. 51 %.

Dispositional Hearing – final stage. Judge decides what to do with the minor.

**Delinquent Minor** – General Definition, under 18 in violation of the law; Examples of Delinquent Minors – 16 year-old, auto theft; 12 year-old, murder. Processed as Juveniles.

There are offenses which are excluded from the definition, i.e. lowered the age to be tried as an adult. Example of someone excluded from the general definition - 16 year-old, First Degree Murder. This person would be tried in Criminal Court (as an adult).

### **Proceeding for Delinquents**

Arrest – with reasonable grounds to believe the minor has violated the law.

Secure Custody- placed in locked room or cell or handcuffed to stationary object in a building housing a jail or municipal lock-up. There are time limits:

Under 12 – 6 hours

12 or older – 12 hours

12 or older and "Crime of Violence" under 20 ILCS 310/1-10. -24 hours.

Status offenders should not be placed in detention or secure custody.

Minors under 18 should not be confined with those 18 or older. Even if they will be tried as adults, they must be kept separate.

Detention – physically restricting facility. Minor must be at least 10 years-old.

Detention Hearing – within 40 hours.

Delinquency Petition – State files.

Trial – within 120 days.

Standard of Proof – proof beyond a reasonable doubt.

Sentence – ranges from probation to being placed in the custody of the Department of Juvenile Justice.

Release – upon turning 21(unless 405/5-810 applies). The Juvenile Court Act only has jurisdiction over "minors," which under the Juvenile Court act is under 21.

\*Be aware that the definition of "minor" may be different under different chapters of law. Under the Mental Health and Disabilities Code, "minor" is defined as someone under 18, for example.

**TOPIC:**

Rules of Evidence (4 HOURS)

**MANDATORY READING  
MATERIAL:**

Handout: "Rules of Evidence"

**STUDENT PERFORMANCE OBJECTIVES - "S.P.O."s**

When given a lecture and discussion, the trainee, when given a multiple choice examination, will demonstrate the ability to:

1. Define:
  - "evidence" (**SPO 1a**)
  - "direct evidence" (**SPO 1b**)
  - "circumstantial evidence" (**SPO 1c**)
  - "real evidence"
  - "corpus delicti" (**SPO 1g**)
2. Determine the tests for admissibility of evidence:
  - relevant **SPO 4a**
  - material **SPO 4b**
  - competent **SPO 4c**
3. Define Opinion Evidence (**SPO 1d**) and differentiate the two types:
  - lay opinion
  - expert opinion

## Rules of Evidence

**Evidence:** The legal means by which a disputed fact is proved or disproved in a court of law. (Includes testimony, documents, objects). *Every type of proof legally presented at trial.*

### Classifications of Evidence:

**Direct Evidence:** Direct Evidence proves material facts without resorting to inferences from other facts. Facts that a witness knows from knowledge acquired through the 5 senses, e.g. **eyewitness testimony and confessions**. An in-car camera recording is direct evidence as to physical events. *Clear evidence of a fact.*

**Circumstantial Evidence:** Evidence which tends to prove a fact, which is not itself material to the case, but from which the Trier of fact (judge or jury) can make an inference about the existence of some other fact which is material to the case. *Some reasoning is required to prove the fact.*

**Real Evidence:** Evidence furnished by the viewing or examination of physical objects as opposed to testimonial evidence.

**Tests for Admissibility of Evidence:** Evidence must be determined by the judge to be relevant, material and competent.

**Relevant Evidence:** Evidence that tends to either prove a fact in controversy or make that fact more or less probable when tested by logic experience and accepted assumptions concerning human behavior; must bear directly on some issue of the case.

**Material Evidence:** is relevant evidence, which tends to prove a substantial issue in the case or has a significant bearing on the decision. Photos of a grisly crime scene would probably not be material; they would have a more prejudicial than a probative affect.

*A foundation must be laid for evidence which, on its face, appears not to be relevant. Foundation is shown by establishing a relationship between the offered evidence and the contested issue in the case.*

**Competent Evidence:** Evidence, which is acceptable as a matter of law. There are rules which prohibit certain evidence from being admissible. **Examples** of evidence that would not be "competent" would include evidence seized in violation of the Exclusionary Rule, or Hearsay that does not meet any of the exceptions to the Hearsay Rule.

**Define the term “opinion evidence” and describe the two types:**

Lay opinion- Opinions from the average person are limited to matters of description from personal observations.

Expert opinion-given when the facts are so complex and foreign to the common experience of the ordinary person. A person must have special or unique knowledge to be qualified to testify as an expert.

*In Illinois the admission of expert testimony is governed by the Frye standard: whether the methodology or scientific principle upon which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs.*

**"Corpus Delicti"**

"Body of the Crime."

The State has the burden to provide objective proof that a crime has been committed. The confession of the Defendant may be enough for probable cause to arrest, but is not enough to get a conviction.

If the State cannot produce the dead body of the victim in a homicide case, then this can be a problem in providing proof that the victim's death was caused by the defendant. But the term "corpus delicti" does not strictly refer to the dead body in a homicide case.

## Evaluation Questions

1. What is the definition of “evidence?”
2. What do we call evidence which does not prove a fact directly, but instead proves related facts which may create an inference about the existence of a fact?
3. What do we call it when an eyewitness gives testimony about knowledge that he or she acquired through one or more of the five senses?
4. What term describes evidence which is physical in nature, as opposed to testimonial?
5. What are the 3 “classifications of evidence?”
6. What are the “tests for admissibility” of evidence in court?

7. Give an example of evidence which would not be admissible because it is not “competent.”
8. Give another example of evidence which would not be admissible because it is not “competent.”
9. Mr. W is testifying at the trial of Mr. D for the murder of Mr. V. He testifies that he was present at the time of the crime, and that he saw Mr. D shoot and kill Mr. V. On the issue of whether or not D shot V, what kind of evidence has Mr. W just presented?
10. Mr. W is testifying at the trial of Mr. D for the murder of Mr. V. The victim died from the ingestion of rat poison. Mr. W testifies that on the day before the murder, he sold rat poison to the defendant. On the issue of whether or not D poisoned V, what kind of evidence has Mr. W presented?
11. When is opinion testimony by a layperson, or non-expert, permitted?
12. When is expert testimony needed?
13. Which of the following is false regarding opinion evidence?
  - a. A layperson may testify about matters of description from personal observation.
  - b. Experts may testify when the fact-finder requires specialized knowledge.
  - c. A layperson may never give opinion evidence.
  - d. A person must be qualified in order to give an opinion as an expert.



**TOPIC:** Rules of Evidence

**MANDATORY READING  
MATERIAL:**

1. Read: 725 ILCS 5/115-5 through 725 ILCS 5/115-15
2. Handout: "Evidence Questions and Terms"

**STUDENT PERFORMANCE OBJECTIVES**

When given a Lecture and discussion, the trainee, when given a multiple choice examination will demonstrate the ability to:

1. Define "hearsay" and identify its effects on the admissibility of evidence.  
**(STATE SPO 2)**
2. Recognize the following circumstances which constitute exceptions to the "Hearsay rule":
  - a. Dying declaration **(STATE SPO 3a)**
  - b. Excited Utterance (*res gestae*) **(STATE SPO 3b)**
  - c. Public records **(STATE SPO 3c)**
  - d. Business records **(STATE SPO 3d)**
3. Identify the two classes of memoranda and notations.
  - a. Present Memory Refreshed. **(STATE SPO 3f)**
  - b. Past Recollection Recorded. **(STATE SPO 3e)**

**Define the term “Hearsay” and identify its effects on the admissibility of evidence:**

**Definition:** A statement other than one made by the Declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.

**The Hearsay Rule:** The rule is that Hearsay is generally inadmissible. If a person begins to answer a question with "I was told," for example, they are probably about to present a hearsay statement.

**Recognize the following circumstances, which constitute exceptions to the rule against hearsay:**

- ❖ **Dying Declaration:** (1) A victim of a homicide case who believes that they are about to die (no hope for recovery), (2) makes a statement regarding the circumstances of the infliction of their injuries and (3) later does die. This statement may be repeated in court by the person who heard it. Example: a police officer takes a statement from a shooting victim just before they die.
- ❖ **Excited Utterance (res gestae):** (1) The person who made the statement experienced a traumatic event/*startling event*, (2) the statement made was a response to the traumatic event, and (3) the statement was made while the person was still under the influence of the event. There is no time limit, but any delay raises question as to fabrication. Example: a police officer takes a statement from a person who has just been shot. If the circumstances apply, the person who heard the statement may repeat what they heard in court.
- ❖ **Public Records:** May be used as evidence of the things stated in them even though they are hearsay if: 1) the record is required to be kept by law, and 2) the entries in question were made in the regular course of the maker’s official duties.
- ❖ **Business Records** (writings, records or entries written):  
Admissible if it was the regular course of business to make it at that time or within a reasonable amount of time. For example, if a security log usually made on a nightly basis, an entry made a month later would not qualify as a business record.

725 ILCS 5/115-5.

**Explain the two classes of memoranda and notations:**

**Past Recollection Recorded**-allows introduction of the record into evidence if: 1) witness has no independent recollection, 2) document failed to refresh recollection 3) witness made or reviewed record at the time of occurrence 4) record was accurate when made. If an officer while testifying is reading off of reports in order to answer questions, this is allowed as "past recollection recorded."

**Present Memory Refreshed**-allows witness to refer to notes during testimony. If an officer needs to glance down at paperwork in order to refresh his or her memory before continuing to answer questions, this is "present memory refreshed."

### **Evaluation Questions:**

1. What do we call the rule of evidence which states that hearsay evidence is generally inadmissible?
2. Why is there a rule which generally prevents the use of hearsay as evidence?
3. Mr. Defendant is on trial for the murder of Mr. Victim. As part of the investigation of the murder, Detective Jones interviewed a witness, Mr. Witness, who told her that he saw Mr. Defendant shoot and kill Mr. Victim. The interview took place 2 days after the murder. At the time of the trial, Mr. Witness cannot be found to testify about what he saw. The State's Attorney now wants Detective Jones to testify about what Mr. Witness said to her in the interview, in order to prove the guilt of the defendant for murder. Will Detective Jones be permitted to testify about what Mr. Witness told her? Explain.
4. Mr. Defendant is on trial for the murder of Mr. Victim. At the scene of the murder, Officer Jones questions another victim of the shooting, Mr. Witness, who told her that Mr. Defendant just shot him in the leg and shot Mr. Victim in the head. The interview took place approximately 5 minutes after the shooting, while waiting for an ambulance. Mr. Witness survived, but at the time of the trial, Mr. Witness cannot be found to testify. The State's Attorney now wants Officer Jones to testify about what Mr. Witness said to her at the scene, in order to prove the guilt of the defendant for murder. Will Officer Jones be permitted to testify about what Mr. Witness told her at the scene? Explain.
5. Mr. Defendant is on trial for the murder of Mr. Victim. At the scene of the murder, Officer Jones questioned Mr. Victim, who told him that Mr. Defendant just shot him. The interview took place approximately 5 minutes after the shooting, while waiting for the ambulance. Mr. Victim specifically said, "I know I won't survive this. Mr. Defendant shot me." The victim was pronounced dead upon arrival at the hospital. The State's Attorney now wants Officer Jones to testify about what Mr. Victim said to him at the scene, in order to prove the guilt of the defendant for murder. Will Officer Jones be permitted to testify about what Mr. Victim told him? Explain.

6. What must be true in order for a “dying declaration” to be admissible as an exception to the hearsay rule? There are three elements necessary for this hearsay exception to apply.
7. What must be true in order for an “excited utterance” to be admissible as an exception to the hearsay rule? There are three elements necessary for this hearsay exception to apply.
8. The “excited utterance” exception is also known as what?
9. For a document to qualify as a “public record” under the hearsay exception, what needs to be true?
10. For a document to qualify as a “business record” under the hearsay exception, what needs to be true?
11. In the rules of evidence, what is it called when, while a police officer is testifying about an event, and he has no present recollection of that event, he is permitted to read from a document in order to be able to answer questions and continue testifying?
12. In the rules of evidence, what is it called when, while a police officer is testifying about an event, and she has limited recollection of that event, she is permitted to glance down at a document in order to refresh her memory before continuing to testify?

**TOPIC:** Rules of Evidence

**MANDATORY READING MATERIAL:**

1. Review 725 ILCS 5/115-5 through 725 ILCS 5/115-15
2. Handout: "Evidence Questions and Terms"

**STUDENT PERFORMANCE OBJECTIVES**

When given a Lecture and discussion, the trainee, when given a multiple choice examination, will demonstrate the ability to:

1. Recognize circumstances that constitute an exception to the rule against hearsay: admissions and confessions. **(STATE SPO 3g)**
2. Identify the term "impeachment" of a witness. **(STATE SPO 1f)**
3. Identify the term "presumption." **(STATE SPO 1h)**
4. Identify the "Best Evidence Rule." **(STATE SPO 1e)**
5. Define "evidentiary privilege"
6. Recognize certain classes of persons/relationships that are granted exemption or immunity against the revelation of confidential communications:
  - Attorney - Client Privilege **(STATE SPO 5b)**
  - Doctor - Patient Privilege **(STATE SPO 5c)**
  - Clergy – Confessor Privilege **(STATE SPO 5d)**
  - Husband - Wife Privilege **(STATE SPO 5a)**
  - Rape Crisis Personnel – Sexual Assault/Abuse victim **(STATE SPO 5e)**
  - Counselor – victim of violent crimes **(STATE SPO 5f)**

**Define the Admission & Confession exception to the hearsay rule: If the content of the statement is an admission or a confession, this presents an exception to the hearsay rule. The person who heard the statement may repeat it in court.**

**Confession:** voluntary acknowledgement communicated to another person of guilt of the offense charged, and the circumstances of the act. **Admission:** voluntary acknowledgement made by a party of the existence of certain facts.

For Confessions and Admissions there are other issues related to admissibility:

- Were Miranda Warnings required?
- If the person had Miranda rights, did they knowingly and intelligently waive those rights?
- Were the statements voluntarily given?

If the admission or confession was obtained lawfully by police, the hearsay exception allows the statement to be repeated in court.

**Define the term, impeachment of a witness.**

The process in which opposing counsel brings matters to the attention of the Trier of fact, in an effort to influence their assessment of the credibility of the witness.

Grounds for Impeachment include:

- ✓ Lack of Capacity-witness is incapable of giving opinion (i.e., unable to observe, recollect or communicate).
- ✓ Interest or Bias-if the witness has a bias or will benefit from the outcome of the case.
- ✓ Prior inconsistent statements by witness-giving contradictory statements.
- ✓ Former Convictions-for a *felony or misdemeanor that involves dishonesty within the past 10 years*.
- ✓ Witness has been promised or granted immunity (i.e., “cutting a deal” with the prosecution)

**READ YOUR OWN REPORTS BEFORE YOU TESTIFY**

**Define the term presumption.**

An inference which the law requires the Trier of fact to draw from a given set of proven facts.

Example: "presumption of innocence."

**Recognize the “Best Evidence Rule”**

An original document is preferred as evidence over a copy; and therefore, before a copy can be introduced into evidence, the party must adequately explain why the original cannot be produced. If carbon copies are all that is available (as in a parking ticket) then “duplicate originals” are admissible because the documents were created at the same time as the original.

**Tacit Admission-** an accusatory statement made in someone’s presence and hearing and not denied by him. A witness may testify that when they accused the defendant of the crime, they said nothing, and did not deny it. Does not apply when a person is in custody; post-arrest a person has a privilege against self-incrimination and the fact that they chose to be silent may not be used as evidence to imply guilt.

**Define the term “evidentiary privilege”**

Those statements made by certain persons within a protected relationship, which the law protects from forced disclosure on the witness stand.

**Recognize certain classes of persons/relationships that are granted exemption or immunity against the revelation of confidential communications. These parties are not held in contempt of court for refusing to testify.**

- Client and attorney-prevents attorney from disclosing where the person making the statements was seeking legal advice. The evidentiary privilege belongs to the client, but attorney probably could not disclose the information at all due to rules of the profession.
- Patient and Physician-prevents physician from disclosing information related because the patient was seeking medical treatment. Only protects information necessary to enable doctor to professionally serve the patient. The evidentiary privilege belongs to the patient, but the doctor probably could not disclose the information at all due to rules of the profession.
- Confessor and Clergy- The privilege belong to both parties. If defendant waived the privilege, the clergy could still refuse to testify.
- Husband and Wife- The privilege applies to communication that occurred while they are married. Privilege belongs to both parties. If the defendant waived the privilege, the other spouse could still refuse to testify. 725 ILCS 5/115-16.
- There are other relationships with the privilege; Domestic Violence Counselor and victim, for example.

### **Evaluation Questions:**

1. Mr. Defendant is on trial for the murder of Mr. Victim. At the scene of the murder, Officer Jones questioned Mr. Defendant, who confessed that he shot and killed Mr. Victim. At the trial, Mr. Defendant will not be testifying. The State's Attorney now wants Officer Jones to testify about what Mr. Defendant admitted to him at the scene, in order to prove the guilt of the defendant for murder. Will Officer Jones be permitted to testify about what Mr. Defendant told him? (Assume there are no Miranda problems.)
2. Ms. Defendant is on trial for the murder of Mr. Victim. After Ms. Defendant was arrested for the murder, Detective Jones questioned her. Ms. Defendant confessed to Detective Jones that she shot and killed Mr. Victim. At the trial Ms. Defendant will not be testifying. The State's Attorney now wants Detective Jones to testify about what Ms. Defendant admitted to him in the interview, in order to prove the guilt of the defendant for murder. Will Detective Jones be permitted to testify about what Ms. Defendant told him? (Assume there are no Miranda problems.)
3. What is it called when one party attempts to bring certain circumstances to the attention of the jury, for the purpose of destroying the credibility of a witness?
4. "An inference which the law requires the trier of fact [jury or judge] to draw from a given set of proved facts" defines what term?
5. What is the rule of evidence which states that, if the contents of a written document are sought to be proven, the original is preferred to a copy?



6. Describe the “Best Evidence” rule.
7. “An accusatory statement, tending to involve one in the commission of a crime, made in his presence, and not denied by him” defines what term?
8. Officer Smith is testifying about an arrest that she made for possession of a controlled substance. She testifies that the reason she originally stopped the defendant in his vehicle was because she saw him drive through an intersection while the traffic signal was red. Upon cross-examination, the defense counsel asks why, if this is true, no mention of this appears in her report, and no traffic citation was ever issued. According to the rules of evidence, what is the best way to describe what the defense attorney is trying to do by asking the officer these questions?
9. Parties within certain relationships, who engage in confidential communications, cannot be compelled to testify about those communications. What is this concept called?
10. The attorney-client evidentiary privilege exists as long as the communication was confidential. What else must be true in order for the communication to be privileged?
11. The doctor-patient evidentiary privilege exists as long as the communication was confidential. What else must be true in order for the communication to be privileged?

12. The husband-wife privilege exists as long as the communication was confidential. What else must be true in order for the communication to be privileged?

13. Mr. Defendant is being prosecuted for murder. The State's Attorney knows that Mr. Defendant is a practicing Catholic. He regularly went to confession and met with his priest, Father O'Connor, during the time the murder occurred. The State's Attorney subpoenas Father O'Connor because the State believes that Mr. Defendant confessed to Father O'Connor about the murder. Father O'Connor refuses to testify about any private conversations which he had with Mr. Defendant. Will Father O'Connor be held in contempt of court for refusing to testify about Mr. Defendant?

14. Mr. Defendant is being prosecuted for murder. The State's Attorney subpoenas Mr. Defendant's lawyer because the State believes that Mr. Defendant confessed to her about the murder. The attorney refuses to testify about any private conversations which she had with Mr. Defendant as his attorney. Will the attorney be held in contempt of court for refusing to testify about conversations with Mr. Defendant?

15. Ms. Defendant is being prosecuted for murder. The State's Attorney subpoenas Ms. Defendant's ex-husband, because the State believes that Ms. Defendant confessed to him about the murder while they were married. The husband refuses to testify about any private conversations which he had with Ms. Defendant during their marriage. Will the husband be held in contempt of court for refusing to testify about the private conversations with Ms. Defendant?

**TOPIC:** Case Preparation and Courtroom Testimony (6 HOURS)

**MANDATORY READING MATERIAL:**

1. Handout: “Testifying in Court: Ten Ways To Lose Your Case”
2. Handout “Case Preparation and Courtroom Testimony”
3. Handout: Arrest Report, Complaints, Felony Minute Sheet

**STUDENT PERFORMANCE OBJECTIVES**

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Identify the need to confer with State’s Attorney, or City Attorney prior to testimony regarding case to note relevant facts. **STATE SPO 1**
2. Identify the need to maintain confidentiality **STATE SPO 2**
3. Identify proper procedure when appearing in courtroom. **STATE SPO 3**
4. Identify proper procedure to present evidence in legal proceedings. **STATE SPO 4**
5. Identify proper techniques in providing testimony. **STATE SPO 5**
6. Identify the need to discuss problems regarding a past case that should be corrected in future cases with State’s Attorney or City Attorney. **STATE SPO 6**

## CASE PREPARATION AND COURTROOM TESTIMONY

1. A **complaint** is a verified written statement signed by a private citizen or a Police Officer and presented to a court charging the commission of an offense.
2. The “**Blue Book**” contains state misdemeanor and felony complaints.
3. A complaint must contain:
  - a. County of the offense
  - b. Date of the offense (if the exact date is unknown give parameters)
  - c. Name of the complainant
  - d. Name of the offense
  - e. Name of the person charged with the offense, if defendant uses an alias he is prosecuted under the alias.
4. A **felony minute sheet** (also known as the form 101) must be completed prior to any felony proceeding.
5. Confidentiality should be maintained prior the court date in order to:
  - a. Prevent drawing adverse publicity to the case
  - b. Prevent the defendant’s attorney from tricking the officer out of important facts
  - c. Prevent violating the rights of underage (juvenile) offenders
6. Prior to testifying in court the prosecuting attorney should be consulted in order to:
  - a. Review witness statements
  - b. Review recovered evidence
  - c. Iron out weak points in the investigation
  - d. Discuss defense tactics, the order for presenting witnesses and identifying possible hostile witnesses.
  - e. Discuss any follow up investigation not covered in the report.
7. Civilian witnesses should be prepared for courtroom testimony by:
  - a. Being informed of the proper court date
  - b. Being provided with transportation when necessary
  - c. Being informed of courtroom procedures
  - d. Advised of the need to maintain confidentiality, request that they not talk to unknown persons regarding the case.

\* DO NOT COACH THEM ON THEIR TESTIMONY

8. Because the testifying officer is responsible for assuring that all necessary inventoried evidence in court the officer should:
  - a. Contact the assistant states attorney to find out what evidence is needed
  - b. Get needed evidence from the custodian
  - c. Maintain the chain of evidence; no unauthorized persons should ever gain control over the evidence
  - c. See if the crime lab report is ready
  - d. If the evidence is inventoried but not in court bring the evidence report.
9. While testifying a police officer should not:
  - a. Have anything in his or her mouth, or fidget with any object
  - b. Be hostile
10. The officer should:
  - a. Direct his or her testimony to the jury
  - b. Wear the proper clothing
  - c. Properly prepare his case
  - d. Be fair
  - e. Review all submitted reports
  - f. Discuss any problems with the prosecutor before trial, do not be afraid to tell the prosecutor that this was the first time you arrested someone for a particular offense.
  - g. Pause 3-5 seconds before answering any questions in order to formulate his answer, and insure that he answers the question, plus it gives the prosecutor the chance to object prior to you giving an answer.
  - h. Expect the defense attorney to try everything to shake the officer's confidence.
11. Testifying in court marks the final step taken in a particular case. Remember the only function of any witness in a courtroom is to testify truthfully.
12. A jury will make its final decision, in a criminal case, based upon its judgment regarding the truth and veracity of the witnesses.
13. You should seek the prosecuting attorney's feedback after trial concerning:
  - a. How you were as a witness
  - b. How to improve your investigative techniques
  - c. How to improve on the witness stand.

## FELONY MINUTE SHEET

A **FELONY MINUTE SHEET** (101's) is necessary for each felony charge being made against any defendant. If a case has four defendants, four Felony Minute Sheets must be presented to the Assistant States Attorney prior to the preliminary hearing. One additional copy of the Felony Minute Sheet is required for the court. Additional copies may be made where needed for individual files or in accordance with current department directives.

### PREPARATION OF THE FELONY MINUTE SHEET

The following is the information required under the various headings of the Felony Minute Sheet (see example)

1. **COURT:** Indicate the branch and court call of the court before which the case will **first** be heard.
2. **DEFENDANT INFORMATION:**  
List the I.R. number and the defendant's name-first name, middle, last name, his age, the date of arrest and the charge against all the defendant's being charged with this crime. Indicate any aliases by which a defendant is known. If the arrest was made on the same day as the crime was committed, include the time of arrest with the date of arrest. Remember that this is a court form, write times and dates in conventional manner. In listing the charge include the title and the citation (example: Murder, 720 ILCS 5/9-1).
3. **DATE, TIME AND PLACE OF THE OFFENSE:** Use conventional date and time. List the street address as place of the offense.
4. **FACTS:** Here state briefly the essential elements of the case plus any facts that add to or detract from the weight of the case. Include the date, time, location and from whom, property and/or weapons were recovered and the person who recovered them. Include the type of building involved if it is relevant to the case (example-in arson cases manner of building is relevant).

The facts must be related accurately and must conform to the facts as related in the narrative of the arrest report. Note at the end of this section whether the defendant made any admissions relevant to the charge, whether the arrestee was advised of his or her rights (including the time) and who approved felony charges (including the time).

If you run out of space---write the word over on the bottom line- and continue on the reverse side.

5. **WITNESSES:** List the names, addresses, apartment numbers, and telephone numbers (home and work) of all witnesses. Prosecution witnesses are listed first. Police officers are listed after all of the witnesses.

Write the names and addresses clearly, this information is needed for issuing subpoenas.

## **TESTIFYING IN COURT WAYS TO LOSE YOUR CASE**

1. Walk into court looking like a bum. There is no valid reason for a jury to give less weight to the testimony of a witness who makes a poor appearance, but they do.
2. If your case has a weak point, don't tell the prosecutor. This always adds excitement and gives the defendant an additional chance to go free. Had you told the prosecutor of the weakness, he or she might have prepared for it.
3. If the defendant pleads not guilty, take it as a personal affront. How dare this civilian question your word. Let the judge and jury know that, from now on, this is a personal battle between you and the prisoner.
4. When the opposing counsel wants you to become angry, cooperate. After some baiting, get mad and tell the defendant's lawyer what you really think of the lousy so and so he or she represents.
5. Do not worry about the facts. Any misinformation you give on direct examination can be corrected on cross-examination. The defense will love to show that you know nothing or are covering up the truth.
6. Be positive about everything. Be exact, precise. This will make a good impression, unless someone takes the trouble to prove you wrong.
7. If you are sure you don't know, guess anyway. Such testimony is not admissible but the judge might make an exception in your case. If he or she refuses to permit you to guess just sit there and pout.
8. Do not make notes at the time of arrest. It is fun to test your memory. Often you will be called upon to testify at more than one stage of a case. You can break the monotony by giving a different version at each stage of the case.
9. If you make notes, do not study them before trial. The judge is bound to be patient while you sit and try to figure out what you wrote.

10. Appear belligerent. Many people expect police officers to throw their weight around. Do not disappoint them. A juror studies a cop on the witness stand in hopes of detecting a similarity with the bully who once gave them a traffic ticket.
11. Act as though your job depends on a conviction. This will kill the unbiased atmosphere which judges and juries like to see in all witnesses. Everyone will pay less attention to your testimony, but they will know that you are trying.
12. Get rough with the defendant at the time of the arrest. This often assists the defendant to make up his mind to plead not guilty. It also gives him a chance to make the officer look like the true culprit.
13. Ignore the laws of search and seizure. Why bother to get a search warrant just to satisfy constitutional requirements? A motion to dismiss may be sustained and you will not even have to testify.
14. Tell more than the question asks. The defense is interested, and may find out all sorts of things.
15. Argue with the judge about the evidence. The judge may hold you in contempt, but you can step down with the glory of a martyr.



## **TOPIC: MUNICIPAL CODE OF CHICAGO**

Municipal Code of Chicago

Total Hours: 2

Segments: Hour 1: Ordinances Related to Individual Behavior.  
Hour 2: Ordinances Related to Buildings and Property.

### **Materials, Equipment, and Logistics**

One instructor will be needed for this class. The instructor should have this lesson plan and the attached handout, which is the same handout provided to the student. The instructor and Trainee should have the Chicago Municipal Code Handbook. A classroom with a board is preferable.

### **Lesson Goal**

The overall purpose of the block of instruction is to familiarize the trainee with the Municipal Code of Chicago. **The more specific goal is to recognize the ordinances as useful tools towards the promotion of safe neighborhoods under the Chicago Police Alternative Police Strategy.** All of the ordinances were chosen with this goal in mind.

This section will serve as an introduction to some of the ordinances within:

Title 8: Offenses Affecting Public Peace, Morals and Welfare.  
Title 10: Streets, Public Ways, Parks, Airports and Harbors.  
Title 13: Buildings and Construction.  
Title 7: Health and Safety.

Please note that ordinances are subject to change, and recruits should refer to the text for the full language of any ordinance.

## **Learning Objectives**

### **Hour 1**

1. Recognize the elements of “Disorderly Conduct;” compare to state law. 8-4-010
2. Outline the elements of “Gang Loitering.” 8-4-015
3. Distinguish the provisions of “Narcotics-Related Loitering.” 8-4-017
4. Explain the requirements for “Aggressive Panhandling” violations. 8-4-025
5. Recognize the violations included in the ordinance of “Drinking in Public Ways.” 8-4-030
6. Define “Trespassing” under the city law. 8-4-050
7. Describe the violation of “Vandalism.” 8-4-060
8. Understand the ordinance of “Threatening a Community Policing Volunteer.” 8-4-075
9. Recognize the violation of “Public Urination or Defecation.” 8-4-081
10. Remember the “Prohibition Against Racial Profiling” as it would apply to enforcement. 8-4-086
11. List the elements of “Defacing Property in Public Places.” 10-8-380
12. Recognize what is prohibited by “Casting Refuse and Liquids.” 10-8-480

### **Evaluation Questions: Hour 1**

1. What is required to establish a “Disorderly Conduct” violation under 8-4-010(a)?
2. Why isn’t it lawful to remove members of criminal street gangs from the public way, solely based on membership in the group?
3. Why isn’t it lawful to remove someone from the public way solely based on the fact that they have been known to have sold drugs in the past?
4. Why isn’t it lawful to remove someone from the public way solely based on the fact that they are asking passers-by for money?
5. What ordinance includes prohibiting possession of open containers of alcoholic liquor in motor vehicles?
6. What is required for a “Trespassing” violation under (a)-(c) of the ordinance?
7. What illegal activity does the violation of “Vandalism” include?
8. For the violation of “Threatening a Community Policing Volunteer,” must the threat be made directly to the volunteer?
9. An officer sees an individual urinating in an alley. What ordinance violation applies?
10. Why is it unlawful to detain someone for questioning or arrest them solely based on actual or perceived race, ethnicity, gender, religion, disability, sexual orientation, marital status, parental status, military discharge status, financial status or lawful source of income?
11. What types of properties are the subjects of “Defacing Property in Public Places?”
12. What is the ordinance which prohibits “littering” called?

**Learning Objectives**

1. Describe “Drug and Gang Houses, Houses of Prostitution and other Disorderly Houses.” 8-4-090
2. Recognize what is a “Prohibited Means of Managing or Controlling Real Estate.” 8-4-091
3. Explain the violation of “Damage to Public Property.” 8-4-120
4. List the elements of “Possession of Etching Materials, Paint or Marker with Intent to Deface Unlawful.” 8-4-130
5. Describe the responsibilities of owners under “Vacant Buildings.” 13-12-125
6. Recognize the power of the city under “Dangerous or Unsafe Buildings.” 13-12-130
7. Explain the “City Board up Provision.” 13-12-131
8. Describe the “Minimum Requirements for Vacant Buildings.” 13-12-135
9. Recognize the ordinance requiring watchmen under “Vacant or Open Buildings – Watchman Required.” 13-12-140
10. List the “Improperly Maintained Buildings and Structures subject to Nuisance Abatement Proceedings.” 13-12-145
11. Describe “Establishments Unlawfully Used for Controlled Substances.” 7-24-098
12. Recognize the violation of “Dumping on Real Estate Without a Permit.” 7-28-440
13. Explain the ordinance “Illegal Dumping – Anonymous Program and Reward.” 7-28-445
14. Describe the responsibility of the owner under “Owner Responsible for Removal – Nuisance.” 7-28-450

## Hour 2 Evaluation Questions

1. Who can be fined for violating the ordinance “Drug and Gang Houses, Houses of Prostitution, and Other Disorderly Houses?”
2. If a person having management or control over property recklessly permits the physical condition to endanger health or safety, what violation is this?
3. Does the violation of “Damage to Public Property” include damage to plants?
4. What is a potential consequence for violation of “Possession of Etching Materials, Paint or Marker with Intent to Deface Unlawful?”
5. What is the owner of a vacant building required to do within 30 days of the building becoming vacant?
6. According to the ordinance on “Dangerous or Unsafe Buildings,” if the owner fails to act after receiving written notice, what may the building commissioner do?
7. When does the “City Board-Up Provision” apply?
8. If an owner has a vacant building, does the city require any maintenance?

9. Between what hours is a watchman required for a vacant building?
10. When does a property become a nuisance subject to abatement proceedings?
11. Who may be jailed under “Establishments Unlawfully Used for Controlled Substances?”
12. What violation would apply to someone who travels into a neighborhood to dump their garbage on property?
13. What can a citizen who witnesses illegal dumping do?
14. If my neighbor’s property is has abandoned vehicles on it, is there anything the City can do?

# **Chicago Police Department Basic Recruit Training**

## **The First Amendment**

### **Duration of Instruction**

Total time: 1 Hour

### **References:**

G02-02 “The First Amendment and Police Actions”  
G02-02-01 “Investigations Directed at First Amendment-Related Information”  
S02-02-01 “Investigations Directed at First Amendment-Related Information”  
G02-02-02 “Other Police Action which may Impact First Amendment Conduct”

### **Materials, Equipment, and Logistics**

Learner’s materials include a handout.

### **Lesson Goal**

The overall goal of this block of instruction will be to provide recruits with an overview of the First Amendment and the Department’s Policy.

### **Learning Objectives**

By the end of this block of instruction, recruits will be able to:

1. Summarize First Amendment Rights.
2. Identify “Protected Speech.”
3. Summarize law applicable to persons exercising First Amendment rights on the public way.
4. Explain the authorization process of initiating First Amendment-related information gathering.
5. Describe the Public Gathering First Amendment Investigation.
6. Identify the sworn member’s responsibilities during a First Amendment hostile audience situation.

# Chicago Police Department Basic Recruit Training

## The First Amendment

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### What is the Meaning of First Amendment?

The First Amendment states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging freedom of speech; or of the press; or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances”

### What is protected by the First Amendment?

Note:



**Learning Objective 1: Summarize First Amendment Rights.**

Question: What does the First Amendment protect?

Answer:

### Criminal Conduct

Criminal conduct is not protected by the First Amendment

Department restrictions do not apply to criminal investigations or police actions connected with reasonable suspicion (or probable cause) that a crime:

- **has occurred**
- **is occurring**
- **is about to occur**

In other words where an officer has at least “reasonable suspicion” of crime, the matter should be investigated normally. No Department restrictions apply. Officers should conduct their investigations in conformance with Terry v. Ohio, and other constitutional guidelines.



# Chicago Police Department Basic Recruit Training

## The First Amendment

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### ◆ Learning Objective 2: Identify Protected Speech.

#### Forms of Protected Speech

The two types of speech that may be protected are:

“Pure” speech, which involves written or spoken communications such as:

- Books
- Newspapers
- Leaflets
- Rallies
- Demonstrations
- Actual speeches
- and

“Symbolic” speech, which involves non-verbal expression for the purpose of communicating ideas. Things like:

- Art forms
- Paintings
- Dance

It is important to know that both are types of speech that may be protected.

# Chicago Police Department Basic Recruit Training

## The First Amendment

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◆ **Learning Objective 3:** Summarize law applicable to person exercising First Amendment rights on the public way.

### Applicable Laws

During the recent world trade protests, many people were surprised to learn that legally, a person does not have an absolute right to exercise First Amendment rights on the public way.

Limitations to exercising these rights on the public way include:

- \*reasonable time, place and manner restrictions
- \*any applicable laws such as permit requirements
- \*people cannot obstruct traffic, trespass or damage property

### Department Guidelines

Our primary responsibility is to ensure that all police actions are conducted for a **proper law enforcement purpose** and in accordance with policy.

#### Note:

Question: What is the standard by which Chicago police may initiate an investigation into protected First Amendment activities?

Answer:

# Chicago Police Department Basic Recruit Training

## The First Amendment

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### What is “Proper Law Enforcement Purpose?”

\*A proper law enforcement purpose varies with each situation, and different facts may justify an investigation, a detention, a search, an arrest, or no action at all.

\*The investigation should be intended to address unlawful conduct or to address public safety issues.

\*An investigation must be reasonable in scope and not intended to punish, discriminate, harass, intimidate, retaliate against any person, or chill First Amendment expression.

*An improper police purpose is explicitly prohibited.*

#### Note:

Question: What are examples of “improper police purposes?”

Answer:

# Chicago Police Department Basic Recruit Training

## The First Amendment

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◆ Learning Objective 4: Explain the process of Initiating First Amendment-related Information Gathering.

### Information Gathering:

The gathering and analysis of written or oral speech or other expression which is undertaken:

- Due to or on the basis of the content of the speech or other expression **AND**
- For the purpose of preventing future crime or for the purpose of aiding likely future investigations, even in the absence of reasonable suspicion of a violation of law.

**Notwithstanding the requirement of special authorization, a member may initiate and conduct a First Amendment information gathering investigation**, with prior authorization provided it is impractical to submit paperwork prior, **a command staff member has verbally approved** (infiltration must be verbally approved by Superintendent) and **paperwork is submitted no later than 24 hours** after the initiation of the investigation.

### Note:

Question: Any sworn member may initiate and conduct a First Amendment-Related Intelligence Gathering investigation without exempt approval for a period not to exceed how many hours?

Answer:

# Chicago Police Department Basic Recruit Training

## The First Amendment

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### Learning Objective 5: Describe the Public Gatherings First Amendment Investigation.

#### Public Gatherings and First Amendment Conduct:

An event or gathering in public may be held for the purpose of or concerning ideas or beliefs about:

- public or social policy.
- political, educational, cultural, economic or religious matters.

**Department members present at public gatherings will not interrogate or otherwise question participants concerning their views** unless essential to a criminal investigation or an investigation directed toward First Amendment-related intelligence that has been authorized.

#### Note:

Question: In conducting an investigation of a Public Gathering for public safety purposes, generally what would it be improper for a department member to do?

Answer:

#### Note:

Question: Who may initiate a preliminary investigation of a Public Gathering, for public safety purposes, without authorization?

Answer:

# Chicago Police Department Basic Recruit Training

## The First Amendment

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**Any sworn Department member may initiate a preliminary investigation of a public gathering, for public safety purposes, without authorization as follows:**

1. Members may gather published announcements of future public gatherings and review permit applications.
2. Members may investigate and communicate overtly with organizers of a public gathering or any other person concerning the number of persons expected to participate and similar information regarding the time, place, and manner of a public gathering.
3. Members may investigate prior public gatherings when useful to determine what police resources will be necessary to adequately protect demonstrators, bystanders, the general public, and to enforce all applicable laws.
4. Information obtained during the course of such a preliminary investigation will be made the subject of an Information Report. That report, along with pertinent attachments, will be forwarded to the First Deputy Superintendent.

### **Police Encounters with Citizens:**

If:

Persons assemble on the public way,  
Break no laws,  
and are exercising their right to speak, demonstrate, or assemble,

Then:

No police action should be taken that interferes, harasses or intimidates;  
Members must not question or comment upon the views.

# Chicago Police Department Basic Recruit Training

## The First Amendment

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### Video Recording, Audio Recording, and Photographing Public Gatherings

Filming and photographing of events on the public way is generally appropriate and may be conducted for any proper law enforcement purpose. Example: Filming and photographing events on the public way is generally appropriate in order to document violations of the law and police misconduct, to defend against baseless allegations of police misconduct, as an aid in the future coordination and deployment of multiple police units, and for training purposes.

Furthermore, audio recording may be authorized at the discretion of an exempt commanding officer as circumstances warrant, including documenting the issuance of police orders, warnings, or notices.

**Note:**

Question: Filming and photographing with exempt approval is generally appropriate and may be done for what reasons?

Answer:



**Learning Objective 6: Identify sworn member's responsibilities during a First Amendment hostile audience situation.**

### Protections of First Amendment Rights in Hostile Environment

In incidents involving lawful speaker or offensive exhibitor where:

- hostile audience threatens speaker, artist, exhibitor or art work; or
- there is a danger of harm to persons or property

# Chicago Police Department Basic Recruit Training

## The First Amendment

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Department members will:

- determine ownership/custody of art work or expressive material
- advise speaker, artist or exhibitor, if present, of right to continue expression at the site
- begin or continue police protection
- call for a supervisor

The expression may be discontinued at original site by highest ranking member on scene **if**:

- all reasonable police sources have been deployed to maintain peace and allow expression
- peace efforts against law breakers are not successful
- a threat of imminent violence remains and police are unable to control it

Then police may restore order by:

- taking expressive material into custody; or
- discontinue the expression

When expression is discontinued, it should be permitted to resume as soon as highest ranking member on scene determines:

- order has been restored
- order can be maintained

if the expression resumes.